

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

No. 58

A. L. MECHLING BARGE LINES, INC.,  
ET AL., APPELLANTS,

vs.

UNITED STATES, ET AL.

No. 59

BOARD OF TRADE OF THE CITY OF  
CHICAGO, APPELLANT,

vs.

UNITED STATES, ET AL.

APPEALS FROM THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

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[fol. 1] Placita (omitted in printing).

[fol. 2]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Civil Action No. 61 C 169

Three-Judge Court Requested

A. L. MECHLING BARGE LINES INC., a corporation, IRA BOOKWALTER, CULLOM COOPERATIVE GRAIN COMPANY, CHARLES TREASURE, GRISWOLD GRAIN COMPANY and MAZON FARMERS ELEVATOR, Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION, Defendants.

COMPLAINT—Filed January 31, 1961.

1. This action is brought under the provisions of 28 U. S. C. §§ 1336, 1398, 2284 and 2321-2325, inclusive, and 5 U. S. C. § 1009 to enjoin, set aside, annul and suspend a certain report and Fourth Section Order No. 19346 of the Interstate Commerce Commission, hereinafter called the Commission, made and entered in a proceeding entitled "Fourth Section Application No. 33955, Corn and Corn Products, Illinois to Official Territory," by Division 2 of the Commission on June 8, 1960, and a further order made and entered by the Commission on November 18, 1960, in said proceeding denying the petition of these plaintiffs for reconsideration and reargument of the aforesaid order of [fol. 3] Division 2. Copies of the report of the Commission and orders are attached hereto as Exhibits 1 and 2, respectively, and made a part hereof.

Said orders of the Commission made permanent certain authority previously temporarily given by the Commission to the New York Central Railroad Company and connecting railroads to charge lower rates for the transportation of corn and certain corn products from stations on that line of the New York Central Railroad's track extending west from Kankakee, Illinois (hereinafter called the Kankakee Belt) to destinations in that part of the northeast portion of the United States known as Official Territory, than said railroads contemporaneously charge for the shorter transportation of corn and corn products from intermediate stations at Kankakee, Illinois, and in Indiana, on the same routes, to the same destinations. In the absence of specific authorization by the Commission such rates would be prohibited by Section 4 of the Interstate Commerce Act, 49 U.S.C. § 4. The Kankakee Belt runs roughly parallel to that part of the Illinois River between Morris and Spring Valley, Illinois, at distances ranging from four to thirty miles from the said river.

2. Plaintiff, A. L. Mechling Barge Lines Inc., hereinafter called Mechling, is a corporation organized under the laws of the State of Delaware, having its principal place of business at Joliet, Illinois. It is a common carrier by water in [fol. 4] interstate commerce, and in intrastate commerce within the State of Illinois, and it holds a certificate of public convenience and necessity under Part III of the Interstate Commerce Act, 49 U.S.C. §§ 901 *et seq.* As such, it has for a number of years been a principal carrier by water of corn from ports on the Illinois River to Chicago, Illinois, and as such is a competitor with the New York Central Railroad Company operating the Kankakee Belt for the transportation of corn grown in the northern Illinois corn producing area.

3. Plaintiffs Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company and Mazon Farmers Elevator are operators of grain elevators in Essex, Cullom, Gardner, Saunemin, Mazon, Verona and Cole City, Illinois, respectively. Cullom Cooperative Grain Company and Mazon Farmers Elevator are farm cooperatives organized under the laws of Illinois and owned by



farmers with which they do business. Griswold Grain Company is a business corporation organized under the laws of Illinois. Ira Bookwalter and Charles Treasure are individual proprietors resident in Illinois. Said elevators are located in the said corn-producing area in Northern Illinois. Each of the plaintiffs named in this paragraph at all times mentioned herein sought to, and did, engage in the purchase of corn from farmers in its respective area and resale of that corn to various markets, among them the subterminal [fol. 5] elevators located at ports on the Illinois River. In such activity these plaintiffs, prior to the reduction of rail rates now permanently authorized by said orders of the Commission and Division 2, encountered only normal or no competition from operators of similar elevators located on the Kankakee Belt by reason of their distance from such Kankakee Belt elevators. Since such rates have been reduced as authorized by the Commission in said orders, these plaintiffs have been unable to compete with stations on the Kankakee Belt for the purchase of corn in the territory which these plaintiffs served and face the destruction of their business and loss of their investments.

4. All plaintiffs parties to this complaint filed timely protests with the Commission against the grant of authority given the railroads in said orders, and all appeared at and participated in the hearings held by the Commission in Fourth Section Application No. 33955, and are proper plaintiffs herein by reason of the provisions of 40 U.S.C. § 2323 and 5 U.S.C. § 1009.

5. The rates in question on corn and corn products from stations on the Kankakee Belt to destinations east of Kankakee, Illinois, consist of two factors: The first factor is the rate for transportation from the Kankakee Belt station to Kankakee. (It is this factor which said orders authorize the railroads to reduce.) The second factor is the [fol. 6] reshipping rate from Kankakee to the ultimate eastern destination. This factor remained unchanged and is in all instances the same as the reshipping rate from Chicago which is charged on corn which has been brought to Chicago by Illinois River water carriers, one of which is plaintiff Mechling. The first factor, which is charged for

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transportation from Kankakee Belt stations to Kankakee, is the rail rate which is competitive with Meehling's rates from Illinois Waterway ports near the Kankakee Belt to Chicago. It was the reduction in this water-competitive factor of the rail rates that gave rise to the necessity for the submission by the railroads of their application to the Commission for relief from the prohibition of Section 4 of the Interstate Commerce Act (49 U.S.C. § 4). Prior to such reduction, said water-competitive rail rates had ranged from 13.5¢ to 24.5¢ per hundred pounds according to distance; but, as now reduced on authority of the orders complained of, they are only a flat 6¢ per hundred pounds regardless of distance from all stations on the Kankakee Belt.

6. The record made before the Commission showed and the Commission's examiner who heard the witnesses and all the evidence found, that the reduced 6¢ rail rates, which is the factor competitive with water transportation, is not compensatory to the New York Central Railroad Company [fol. 7] (as required by said Section 4 of the Interstate Commerce Act (49 U.S.C. § 4). Neither Division 2 of the Commission, nor the full Commission questioned that fact or disturbed that finding, but accepted it. They disregarded it, however, erroneously deciding as a matter of law that only the sum of the water-competitive 6¢ factor and the said second factor, which is not water-competitive, need be compensatory, and that the railroad can lawfully be permitted to make up the loss resulting from its rail transportation at the reduced non-compensatory water-competitive 6¢ rate with its other and extra revenue, obtained from the higher non-water-competitive reshipping rates from Kankakee to eastern destinations.

7. Plaintiffs and many other parties presented evidence on the record that the aforesaid reduced rail rate from Kankakee Belt rail stations to Kankakee was lower than necessary to meet water competition. The Commission's examiner so found, after careful review of all the evidence of record. The Commission, however, ignored the direct evidence of record before it and adopted certain speculations and conclusions not supported by evidence in the rec-

ord as its basis for finding that the reduced rate was no lower than necessary to meet water competition.

8. Plaintiff Mechling presented evidence showing that the aforesaid reduced rail rate into Kankakee served to de-[fol. 8] prive Mechling of its inherent low cost advantage as a water carrier over rail carriers, contrary to the National Transportation Policy (49 U.S.C. preceding § 1) which requires that such low cost advantage be preserved. The Commission as a matter of law erroneously held that Mechling had no right to have this inherent low cost advantage preserved and erroneously concluded as a matter of law that the reduction of the said water-competitive rail rate into Kankakee to a non-compensatory level did not amount to a destructive competitive practice.

9. It was admitted and testified on the record before the Commission by the representative and witness of the New York Central Railroad Company, owner and operator of said Kankakee Belt (and disputed by no one) that under the railroad tariffs in question and division agreements between the railroads, the New York Central Railroad will and does transport corn from Kankakee, Illinois, to Chicago, Illinois, and that such other connecting railroads then will and do carry such corn, and products thereof, from Chicago to destinations east of Buffalo and Pittsburgh for a rate division which is substantially (to-wit, 13¢) lower than the rate charged by those same rail carriers for transportation to those same destinations of corn or products milled from corn which has been brought to Chicago by [fol. 9] barge. Plaintiffs challenged this prima facie discrimination against connecting water carriers in violation of Section 3(4) of the Interstate Commerce Act (49 U.S.C. Section 3(4) and sought to establish all details and aspects thereof but were prevented from so doing by a ruling by the Commission's Examiner that divisions of rates were not pertinent to any question of discrimination. The Commission and Division 2 thereof refused to reverse this ruling despite the proper presentation to them of plaintiffs' exception thereto.

10. The Commission's Examiner who heard the witnesses and the evidence carefully reviewed the evidence of record

and found, upon this application of the railroads to be relieved from the prohibition of Section 4 of the Interstate Commerce Act (49 U.S.C. § 4): "Before such relief may be granted, applicants must show that the proposed rate is reasonably compensatory and no lower than necessary to meet the competition; that they have not done so is crystal clear."; that the said water-competitive rail rate faces these elevator-owner plaintiffs with elimination of their business and this plaintiff water carrier with the elimination of water competition with the rail line of the Kankakee Belt; the report of the Commission Examiner is hereto attached as Exhibit 3 and made a part hereof. The Commission, however, by the orders here sought to be enjoined, erroneously and unlawfully granted [fol. 10] to the railroads authorization to maintain the protested rates in force while maintaining higher rates to the same destinations over the same lines from intermediate points in Illinois and Indiana, and denied the petition of these plaintiffs for reconsideration.

11. The reduced rail rates authorized in said orders have diverted virtually all of the corn from the areas in which plaintiff elevator operators made their corn purchases to elevators situated on the Kankakee Belt, and by reason of this diversion of corn to rail movement have reduced the movement by barge of corn from the Illinois River to Chicago to an uneconomically low volume. Said orders will result in continuation of this injury to these plaintiffs.

12. In entering the aforesaid orders the Commission erred in that:

(a) Said orders are arbitrary, capricious and in violation of law;

(b) Said orders are against the manifest weight of the evidence of record and without support of substantial evidence of record;

(c) Said orders do not contain sufficient findings to show compliance by the Commission with substantive requirements of law in such cases;



[fol. 11] (d) The Commission held, contrary to law, that the reduced water-competitive rate need not be compensatory to the New York Central Railroad;

(e) Its order permits the New York Central Railroad to subsidize the non-compensatory rate which competes with water transportation from revenues derived from traffic for which no water competition exists;

(f) The Commission ignored the evidence of record in finding that the rates complained of herein were no lower than necessary to meet water competition and instead relied on certain conclusions without support of substantial evidence of record;

(g) The Commission held, contrary to the law, as stated in the National Transportation Policy (note preceding Section 1, 49 U.S.C.) that, as a matter of law, that plaintiff Mechling had no right to have its inherent low cost advantage preserved;

(h) The Commission concluded as a matter of law, without any basis in any substantial evidence of the record, and contrary to law, that the reduction of the water-competitive rate into Kankakee did not amount to a destructive competitive practice;

[fol. 12] (i) The Commission refused to allow plaintiff to develop information with respect to certain divisions of the rates involved herein which discriminated against connecting water carriers in violation of Section 3(4) of the Interstate Commerce Act, 49 U.S.C. § 3(4);

(j) The Commission authorized the protested rates notwithstanding the Commission's Examiner's finding that the protested rates from Kankakee Belt stations to Kankakee were non-compensatory, were lower than necessary to meet competition and were destructively competitive and thus contrary to the express conditions established by Section 4 of the Interstate Commerce Act, 49 U.S.C. § 4.

13. By reason of the unlawful, arbitrary and capricious action of the Commission in entering the aforesaid order of June 8, 1960, and the Commission's refusal to reconsider and review the aforesaid order on November 18, 1960, plaintiffs have been and will continue to be subjected to irreparable damage if the relief hereinafter prayed for is not granted.

Wherefore, plaintiffs pray:

A. That, pursuant to 29 U.S.C. §§ 1336, 1398, 2284 and 2321-2325, inclusive, there shall be constituted to hear this case a special court of three (3) judges, at least one of whom shall be a circuit judge;

B. That the court, by interlocutory injunction, enjoin and restrain the operation of Fourth Section Order No. 19346 pending final hearing and determination of this suit.

C. That on final hearing of this cause the court adjudge that Fourth Section Order No. 19346, dated June 8, 1960, is unlawful, void, beyond the power of the Commission, arbitrary and capricious, and that judgment be entered setting aside, annulling, suspending and perpetually enjoining the operation of the said order.

D. That plaintiffs have such other and further relief as may be decreed proper by the Court.

Edward B. Hayes, Wilbur S. Legg, Attorneys for  
Plaintiffs.

Lord, Bissell & Brook, 135 South LaSalle Street, Chicago  
3, Illinois, RANDolph 6-0466.

[fol. 14]

**EXHIBIT I TO COMPLAINT****INTERSTATE COMMERCE COMMISSION**


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**FOURTH SECTION APPLICATION No. 33955**  
**CORN AND CORN PRODUCTS, ILLINOIS TO OFFICIAL TERRITORY**


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Decided June 8, 1960

Authority granted, on conditions, to continue or to establish and maintain on corn products from origins in northern Illinois on that part of the New York Central Railroad's Kankakee Belt Line extending eastward from Moronts to Van's Siding, Ill., both inclusive, to points in central, trunkline and New England territories, rates composed of a combination of proportional rates to and from Kankakee, Ill., without observing the long-and-short-haul provision of Section 4 of the Interstate Commerce Act.

*Richard J. Murphy, William C. Leiper, and Daniel J. Sweeney* for applicants.

*Freeman Bradford and A. C. Schier* for interveners in support of the applicants.

*Edward B. Hayes, Wilbur S. Legg, Nuel D. Belnap, Harold E. Spencer, Richard J. Hardy, Richard M. Freeman, James V. Springrose, Lawrence Farlow, James C. Scott, I. M. Funk, Ronald E. Tallyn, E. S. Herron, R. D. Erickson, and J. S. Chartrand* for protestants.

**REPORT OF THE COMMISSION**

**DIVISION 2, COMMISSIONERS HUTCHISON,  
McPHERSON, AND HERRING**

BY DIVISION 2:

The parties filed exceptions to the report proposed by the examiner, to which replies were made. We have heard the parties in oral argument. Our conclusions differ from

those recommended in the proposed report. Exceptions and requested findings not discussed in this report nor reflected in our findings or conclusions have been considered and found not justified.

By this application, as amended, carriers parties to New York Central Railroad Company tariff I.C.C. No. 1169 and Agent H. R. Hinsch's tariff I.C.C. Nos. 4403 and 4499, [fol. 15] apply for authority to continue or to establish and maintain over their existing direct all-rail routes for the transportation of corn products from origins in northern Illinois on that part of the New York Central Railroad's Kankakee Belt Line extending eastward from Morris to Van's Siding, Ill., both inclusive, to points in central, trunkline, and New England territories, rates composed of a combination of proportional rates to and from Kankakee, Ill., as hereinafter described, without observing the long-and-short-haul provision of Section 4 of the Interstate Commerce Act.

The schedules containing the rates and the application were protested by A. L. Mechling Barge Lines, Inc., Cargill, Inc., and the Waterways Freight Bureau, as well as by the Board of Trade of the City of Chicago, the Indiana Board of Trade, two state associations of Illinois elevators, the Illinois Grain Corporation, the Norris Grain Company, and others. The General Foods Corporation, Indianapolis Board of Trade, Evans Milling Company, Illinois Cereal Mills, and several operators of elevators on the Kankakee Belt Line of the New York Central Railroad intervened on behalf of the applicants. Suspension was denied and fourth-section relief was granted temporarily by order No. 18784, entered August 27, 1957, until further order after hearing.

However, on August 28, 1957, certain of the protestants filed an appeal with the United States District Court for the Northern District of Illinois, Eastern Division, to set aside the Commission's temporary fourth-section order and to enjoin the use of the rates without fourth-section relief. A temporary restraining order was issued on that date making the Kankakee combinations inoperative until November 28, 1957, when the court order was vacated and the court action dismissed.



A hearing has been held in the matter of the fourth-section relief sought and several of the respective parties introduced testimony and other evidence according as their interests were affected. In the interest of clarity the rates for which fourth-section relief is herein sought will be referred to as the proposed rates, and those in effect previously as the prior rates. Except as otherwise indicated all rates and charges are stated in amounts per 100 pounds, include the increase authorized in Ex Parte No. 206, and are subject to the increase authorized in Ex Parte No. 212.

The proposed reduced rates are designed to recapture traffic represented as having been lost to competing barge lines operating by way of Chicago in conjunction with rail lines beyond. The carriers do not desire to reduce existing rates at higher-rated intermediate points not affected by the same competitive conditions.

Historically, the rail rates on grain and grain products from northern Illinois, including the considered origins, to eastern destinations were combinations over Chicago, Ill., and later when single-factor rates were established they were made equal to the combinations, the rates on the corn products having been maintained uniformly .5-cent higher than the rates on grain. On traffic accorded transit, the local or flat rates were generally observed to the gateway points, for example Chicago or Kankakee, and the reshipping rates therefrom applied on the outbound movement, observing as minimum the single factor through rate or the [fol. 17] flat rate from the gateway, whichever was higher, in conformity with outstanding fourth-section relief.

In an effort to meet the competition of the barge-rail routes, effective December 15, 1956, the New York Central Railroad established a proportional rate of 5 cents (subsequently increased to 5.5 and 6 cents, respectively, under Ex Parte Nos. 206 and 212), minimum 100,000 pounds, on corn and corn products from the considered origins to Kankakee over its line direct for application in conjunction with the existing proportional or reshipping rates beyond on traffic milled-in-transit and finally destined to points in the western termini of eastern trunk lines and east thereof. At the same time, the through single-factor rates from these origins to final destination, as well as the flat rate from Kankakee to final destination, previously observed

as minimum in connection with the prior rates, were restricted so as not to apply when the combination of the proposed proportional rates to and from Kankakee to final destination is lower. The proposed rates were permitted to become effective at that time without protest and were published in the belief that outstanding relief protected any departures which might occur. However, it was subsequently discovered that by limiting the rates to points at the western termini of eastern trunk lines and east thereof, unauthorized departures were created at destinations in central territory. Moreover, by eliminating the application of the single-factor through rates from origin to final destination, as well as the flat rate from Kankakee to final destination as minimum, origin departures were created at Kankakee and points east, north, and south thereof. To eliminate the unauthorized destination departures the [fol. 18] same combination of proportionals was established for application on like traffic from the same origins to destinations in central territory effective July 30, 1957, which date was voluntarily postponed until August 29, 1957, and because of the temporary restraining order entered by the court did not become effective until November 28, 1957.

The considered rates, as indicated, are designed to meet the barge-rail combination rates over Chicago, comprising the local barge rates to Chicago and the rail reshipping rates to eastern destinations, which are the same as in effect from Kankakee. The local barge rates from 10 Illinois River ports<sup>1</sup> to Chicago ranged from 3.5 to 6 cents on December 5, 1957, and effective December 6, 1957, 3.65 to 6.25 cents when they were increased slightly. There is no milling-in-transit requirement for the application of the barge-rail combination rates. In arriving at the inbound proportional under the proposed rates, the weighted average barge rate of 4.625 cents on the barge movement for the period December 16, 1956 to November 11, 1957, from the 10 ports to Chicago was considered as the competitive rate. On the same movement the weighted average barge rate would be 4.825 cents effective December 6, 1957:

<sup>1</sup> Lockport, Joliet, Morris, Seneca, Ottawa, La Salle, Spring Valley, Hennepin, Henry, and Lacon, Ill.

The proposed rates have application only in connection with the reshipping rates on grain products insofar as they apply on certain corn products. In the first instance the corn is moved from its Belt origin to Kankakee or other [fol. 19] transit points in official territory under the flat rate. After milling-in-transit and reshipment of corn products, the inbound charges are readjusted on the basis of the proportional rate on corn to Kankakee and the reshipping rates on grain products from Kankakee, and the credit is applied to the outbound movement of corn products.

- Charges for the shrinkage and manufacturing loss remain on the basis of the local rate to the transit point.

The Kankakee Belt Line west of Kankakee roughly parallels the Illinois River in northern Illinois. Moronts is on the river about 4 miles from the nearest river port of Spring Valley, Ill., and Van's Siding, which is the most distant point from the river, is about 32 miles south of its nearest port of Joliet, Ill. The northern Illinois territory produces a surplus of corn. At one time, the corn moved over all-rail routes to eastern destinations. However, the development of commerce on the Illinois River about 20 years ago started a diversion of the all-rail movement to barge-rail routes extending from river ports by barge to Chicago, Ill., and thence by rail to eastern destinations. In 1935, 1940, and 1957, respectively, about 1.5, 19, and 59 million bushels of grain, including .7, 16 and 34 million bushels of corn, moved by barge from all Illinois River ports to Chicago. The bulk of the corn moved by barge originates at the 10 river ports which range from 4 to 36 highway miles from the Belt origins, and is drawn from farms ranging up to 40 miles from the ports.

The primary business available to the New York Central at the origin points is grain, predominantly corn, traffic. During 1954, 1955, and 1956, respectively, 467, 729, and 615 carloads of grain, including 305, 533, and 464 carloads [fol. 20] of corn originated thereat. Most of it was Commodity Credit Corporation corn<sup>2</sup> which is usually shipped by rail for export, and is not subject to the same competi-

<sup>2</sup> Corn under Government Control.

tive forces as "free" corn.<sup>3</sup> In 1957, however, for the 6-, 8-, and 12-month periods ended June 30, August 31, and December 31, 1957, respectively, 1,915, 2,411, and 2,681 carloads of corn were originated at the Belt origins.

The 1956 corn crop in the area was somewhat heavier than the 1955 crop, thus increasing the movement in 1957. During the period December 15, 1956, to August 30, 1957, hereinafter called the competition period, when the proposed rate was in effect the corn movement by barge from the 10 river ports to Chicago amounted to 493,668 tons, including 387,256 tons by protestant A. L. Mechling Lines, Inc.<sup>4</sup> Lockport and Joliet, the river ports nearest Chicago, are not affected by the reduced rate to the same extent as the other ports. From Hennepin, Henry, and Lacon, the three ports south of Moronts, the greater part of Mechling's corn business moved to the south in 1956 and north to Chicago in 1957. From the other five ports affected, Mechling's barge movement to Chicago was lower by 22,928 tons in the competition period than during the corresponding period a year earlier.

Cargill Incorporated, Illinois Grain Corporation, Norris Grain Corporation, W. W. Dewey Company, and Glidden Company, operate sub-terminal elevators at one or more [fol. 21] of the ports. Cargill's corn purchases at three elevators from the area south of the river dropped from 1,632,092 bushels in the period December 15, 1955 to August 31, 1956, to 1,171,329 bushels in the competition period. From the same area Illinois Grain purchased 854,326 and 365,005 bushels during the first 8 months of 1956 and 1957, respectively. Norris experienced purchase declines in 1957 under 1956 at three elevators. The decline at the one elevator most affected amounted to 646,380 bushels in the first 6 months of 1957 under the first 6 months of 1956. Dewey's purchases from four points on the Belt were reduced from 120,000 bushels in the first 8 months of 1956 to 15,000 bushels in the same period of 1957. Glidden's

<sup>3</sup> Corn available on the open market.

<sup>4</sup> Includes Mechling's wholly-owned subsidiary, Marine Transit Company.



elevators were opened in the fall of 1956. Its limited experience indicates a decline in purchases in the area subsequent to the effectiveness of the proposed rate.

The river sub-terminal elevators are intermediate between the terminal elevators in Chicago and the country buyers in northern Illinois. They are generally operated by the terminal elevators and were established to accumulate corn for river movement. With the exception of Dewey, which purchases both from country buyers and direct from the farmer, this accumulation is by purchase through the country elevatorman. Originally the country elevators sold to buyers for all-rail movement. Their facilities were designed to receive grain from the farmers, assemble it in carload lots, and load it into rail cars, these being the same functions as to rail corn as are performed by the sub-terminal elevators to barge corn. The advent of river transportation and the establishment of sub-terminal elevators opened another outlet for the corn. In the years [fol. 22] immediately preceding the establishment of the proposed rate, when the corn rates on the Belt were prohibitively high, the country elevators near or at the Belt became, for the most part, buyers or merchandisers of corn for barge movement, and elevated only small quantities of corn for which there were local retail requirements. For his service, the country elevatorman realizes from 1 to 4 cents a bushel depending on whether he actually performs an elevation or merely serves as a merchandiser.

The corn is moved from the farms to the elevators in farmer-owned or for-hire trucks, the cost of which, in either case, is borne by the farmer. Most of the corn sold at the river comes directly from the farm with only a small portion coming from the country elevators. The for-hire truck rates are on a distance scale filed and fixed by the Illinois Commerce Commission. They range from 2 to 4 cents a bushel for distances ranging up to 30 miles.

Bids to the farmers are based on the price at the most advantageous terminal market less the country buyers mark-up and transportation costs. River bids are f.o.b. trucks at river elevator, while Belt bids are f.o.b. rail cars. At the Belt, the farmer stands the cost of elevation; at the river, he does not. Prior to the proposed rate, the free corn

sales of elevators on the Belt were made to the river elevators, because corn for river transportation commanded higher prices than corn for rail transportation. The higher prices were attributed to the ability of the river buyers to market the corn at low transportation costs over the all-rail routes. Since the effectiveness of the proposed rates, it became more profitable for these Belt elevators to ship by rail, and the farmers benefited by the competitive bidding. Despite their ability to pass on to the farmers the advantage [fol. 23] of competitive bids these Belt elevators assert that the amount of corn handled by them has not increased. There is a difference in their business, however, for rather than performing merely the merchandising service on barge corn, they now perform an actual elevation on rail corn. Several country elevators with rail facilities from 3 to 11 miles from the Belt have established portable loaders on the Belt. The 14 supporting elevators contend that without a competitive rail rate, they would again be relegated to the status of merchandisers for barge movement and the investments in their elevators and facilities for rail shipment would be virtually destroyed.

Of the opposing country elevators, eight are located between the Illinois River and the Belt, two are south of the Belt, one is north of the river, and one is on the river and is not served by rail. The last mentioned buys corn from farmers as much as 18 miles south of the river or within six miles of the Belt. Although it has not been affected by the proposed rate, it recognizes the possibility of some loss in its south territory. The others, though served by rail lines other than the Belt, sell most of their "free" corn at the river, and consequently have been adversely affected by the proposed rate. The majority have lost "free" corn business. Most seriously affected was one located at the same point as an elevator served by the Belt. Its business exceeded 250,000 bushels in each of the years 1955 and 1956, but it shipped only 31,000 bushels in 1957<sup>\*</sup> and nothing in January, 1958. The total decline in "free" corn business [fol. 24] of all these country buyers, under 1956, was less

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<sup>\*</sup> The effectiveness of the proposed rate was enjoined from August 28, 1957 to November 28, 1957.

than 25 per cent. One of them shipped a portion of its 1957 business through an elevator on the Belt at a cost of over half of its usual commission on such sales. Another located midway between the Belt and the river, actually experienced a business increase, 1957 over 1956, with most of its corn going to the river. Its rail shipments declined from 258 carloads in 1956 to 78 carloads in 1957. Another believed that the proposed rate would be a temporary situation, and to retain its farmer customers it absorbed the difference, amounting to \$1,800, between bids on corn in rail cars at competitive Belt elevators and bids in cars at its elevator.

The proposed rate has enabled the Belt elevators to outbid the middlemen seeking to purchase corn near the Belt area for river shipment. On January 30, 1958, the prices bid for corn per bushel were \$1.09 in car at Missal, Ill., on the Belt, \$1.04 $\frac{3}{8}$  in car at Kernan, Ill., on another railroad, about three miles north of the Belt, and \$1.075 in truck at the river. Since the Belt bid is f.o.b. freight car, an adjustment to eliminate the cost of elevation (averaging 2.5 cents per bushel) would place it one cent below the river bid at comparable stages in the transportation chain. There is little evidence that "free" corn moves by rail on other than the Belt line from stations between the Belt and the river. The Kernan bid less the cost of elevation would net the farmer \$1.02 $\frac{3}{8}$  in truck at Kernan. The river bid less the 2 $\frac{3}{4}$ -cent truck rate to the river would net the farmer \$1.04 $\frac{3}{8}$  in truck at Kernan.

The Farmers Grain Dealers Association of Illinois and the Illinois Grain Dealer's association, each of which has a membership of approximately 300 country elevators with [fol. 25] facilities at about 400 rail stations in Illinois, ask for the restoration of the former competitive position among their members. It is their position that the rate from one station on one railroad must be competitive with the rate from another station on another railroad; that such rail rates should be competitive with other modes of transportation; and that such fourth-section relief as may be necessary should be granted to enable the railroads to compete with Illinois River barge lines.



Opposed to any fourth-section relief is the Indiana Farm Bureau Cooperative Association, a federated cooperative of about 86 associations with a total membership, mostly farmers, of about 160,000. It is a member of both the Board of Trade of the city of Chicago which opposes, and the Indianapolis Board of Trade, Inc., which supports, the applicants. It operates a 5.5 million bushel elevator on the New York Central at Indianapolis, Ind., and a 2.5 million bushel elevator in Louisville, Ky. It handles about 25 million bushels of corn annually, a large part of which is marketed in official territory. Among its 150 to 200 Indiana shipping points are stations intermediate from Kankakee to eastern destinations on the New York Central from which the rates on milled-in-transit corn to those destinations are as much as 10 cents higher than the proposed rates. Combination rates on corn via barge to Chicago thence by rail to these destinations are lower than the local rates from intermediate Indiana destinations and are applicable over Kankakee as well as Chicago. Shifting some of the Belt corn from barge to rail, which is the effect of the proposed rates, would not alter the present competitive relationship at eastern markets between it and Indiana corn.

[fol. 26] In its study of the competitive situation, the New York Central made inquiries of corn processors at Kankakee, Paris, and Danville, Ill., and Indianapolis, Ind., as well as country elevators on the Belt. Three of the processors, General Foods Corporation at Kankakee, Illinois Cereal Mills at Paris, and Evans Milling Company at Indianapolis, support the proposed rate. Until the effectiveness of the proposed rate the corn purchases of General Foods in the northern Illinois territory for rail delivery amount to about 1.5 carloads a week. After the proposed rate became effective, it received 1,101 carloads during the first 8 months of 1957. In the same period, Illinois Cereal and Evans Milling received 327 and 219 carloads, respectively, from Belt origins. Immediately prior to 1957, Illinois Cereal received only two carloads in 3 years, and Evans Milling did not receive any cars in 15 years, from Belt origins. Of the 1,915 cars of corn originating on the Belt in the first 6 months of 1957, 1,326 cars, reflecting 70 percent



of the total, were destined to Kankakee, Indianapolis, Paris, and Danville, and 548 to Chicago. Practically all, if not all, the 1,326 cars consisted of "free" corn on which the proposed rate would apply, while to Chicago, 31 cars were of "free" corn taking the proposed rate, and 517 were Commodity Credit Corporation corn to which the proposed rate would not apply. From the Belt origins to Chicago, the "free" corn movement aggregated 270 carloads in the 12-month period ended October 30, 1956, and 45 cars in the same period a year later.

According to General Foods, the proposed rate has enabled rail buyers to bid for corn in the country market in competition with river buyers, but a difference in the price [fol. 27] which would be offered to the farmer still exists in favor of the river sub-terminal elevators. It computes differences of .28 and .63 cents a bushel before and after the effectiveness of the proposed rate, respectively. To determine the prices which could be offered to the farmer at the river elevator at Morris, Ill., and at the country elevator at Blair, Ill., it used a Chicago market price of \$1.15 a bushel, from which it subtracted costs of 14.32 cents a bushel on rail originations prior to the proposed rate leaving \$1.0068 a bushel as the amount which could be offered to the farmer at the country elevator; 5.67 cents a bushel on rail originations since the effectiveness of the proposed rate leaving \$1.0933 a bushel as the amount which could be offered to the farmer at the country elevator; and 5.04 cents a bushel on river originations leaving \$1.0996 a bushel as the amount which could be offered to the farmer at the river elevator.

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\* Reflects the proportional rail rate from Blair to Chicago of 20.5 cents and 3 percent tax converted to 11.82 cents a bushel plus country elevator handling of 2.5 cents a bushel.

† Reflects the proposed rate from Blair to Kankakee of 5.5 cents and 3 percent federal tax converted to 3.17 cents a bushel, plus country elevator handling of 2.5 cents a bushel.

‡ Reflects the barge rate from Morris to Chicago of 4.4 cents and 3 percent federal tax converted to 2.54 cents a bushel, plus elevation at river of 1.5 cents a bushel (2.68 cents per 100 pounds) and country elevator mark-up of 1 cent a bushel.

Based on the actual daily bids at five Belt points and five river points during the 7-month period ended July 31, 1957, the Belt bids averaged 2.02 cents a bushel higher than the river bids. The belt bids, however, were f.o.b. rail car, after elevation; while the river bids were f.o.b. trucks, prior to elevation into barges. By adjusting the bids to a similar basis for comparison, the river bids are seen to be higher on the average than the rail bids.

[fol. 28] The record indicates that the use of different moisture discount scales brings about different levels in bids, thus complicating the price picture and making it difficult to determine what the ultimate price paid will be under each scale. General Food's bids were on moisture discounts of 1 cent a bushel for each .5 percent of moisture ranging from 15.5 to 23 percent. There is testimony to the effect that 3 other scales are in use at Chicago and other markets, but there is no evidence that the river and Belt bids actually compared were on different scales so as to require any adjustment.

The cost of trucking from farm to river elevator on barge movements offsets the cost of trucking from farm to Belt elevator on rail movements. It is borne by the farmer in either case. If he were located equidistant from a river elevator and a Belt elevator, he could truck to either at equal cost. The same would hold true for a country elevator operator trucking corn which previously had moved from the farms to his elevator. The protestants contend that it costs more to truck corn from the farm to the river than to the Belt because river elevators are up to 40 miles from the farms and for-hire trucks are usually employed, while country elevators are generally within 6 miles of the farms, and farmer owned transportation facilities are used. The logic of this contention is elusive. From the midway point the cost of getting the corn to the river or to the Belt would be the same whether the shipper, be the farmer or elevator operator, hired or furnished his transportation. From points north or south of the midway position shippers would enjoy offsetting geographical advantages as to movement toward the river and the Belt, respectively.

[fol. 29] Cargill, Illinois Grain, and Glidden compare barge shipper costs of 18.5,<sup>9</sup> 17.7,<sup>10</sup> and 18 cents<sup>11</sup> per 100 pounds respectively, with the proposed rate of 5.5 cents, and assert that these barge costs make no provision for insurance, shipper preference for country run unmixed corn, and the usual water carrier disabilities such as weather conditions and added handling. This comparison is not valid in that barge-shipper costs are inflated, at least to the extent that they include cost of trucking to and elevation at the river. The more valid comparison is that of the bids, properly adjusted as previously herein described. The bids are predicated on the market price at Chicago, the purchaser's requirements, and the cost of transportation to Chicago from the points where the bid is made.

The Board of Trade of the City of Chicago, though contending that the proposed rate is too low, expresses doubt that an inbound rail proportional of 18 cents based upon the [fol. 30] barge movement costs to the shipper is submitted by the river elevator, would enable applicants to meet the barge competition. Since price is a controlling factor in the shipper selection of the transportation mode, it believes that an equitable basis would be one predicated upon the pricing of the corn at the river elevator and on the Belt. Based upon the average difference of 2 cents a bushel in the rail corn bid on the Belt over the barge corn bid at the river and the trucking charges ranging from 2 to 4 cents a bushel from country elevators to river elevators, the proposed inbound proportional, according to the Chicago

<sup>9</sup> Includes trucking from Missal, Ill., country elevator to Ottawa, Ill., river elevator of 5.36 cents, transfer truck to barge of 2.68 cents, barge rate Ottawa to Chicago of 4.95 cents, stevedoring at Chicago of 1.15 cents, transfer barge to rail at Chicago of 4.01 cents, and outbound inspection of .45 cents.

<sup>10</sup> Includes trucking from Dwight, Ill., country elevator to Morris, Ill., river elevator of 5.4 cents, transfer truck to barge of 2.7 cents, barge rate Morris to Chicago of 4.4 cents, and stevedoring and transfer barge to rail at Chicago of 5.2 cents.

<sup>11</sup> Includes nominal trucking from country elevator to Seneca, Ill., river elevator of 3 cents a bushel, transfer truck to barge of 1.5 cents a bushel, barge rate Seneca to Chicago of 2.63 cents a bushel, stevedoring at Chicago of .75 cents a bushel, and transfer barge to rail at Chicago of 2.25 cents a bushel, a total of 10.13 cents a bushel or 18 cents per 100 pounds.

Board of Trade, would be lower than competitively necessary from Belt points in the 2, 2.5, 3, 3.5, and 4 cents a bushel trucking zones by amounts of 7, 8, 9, 10, and 10.5 cents per 100 pounds, respectively. By subtracting these amounts from the Belt bids, and trucking charges from the river bids, the belt and river average bids for the 7-month period ended July 31, 1957, would be approximately the same, differing only from .02 to .2 cents a bushel. Increases, from 7 to 10.5 cents depending upon the trucking zone, would produce inbound proportional rates ranging from 12.5 to 16 cents. The 12.5-cent rate so adjusted would apply from Belt points nearest the river and most affected by barge competition, but most distant to Kankakee, and the 16-cent adjusted rate would apply from points most distant to the river and least affected by the competition, but nearest to Kankakee. Both the simple average of 46.4 miles and weighted average distance of 38.3 miles based upon the corn movements on the Belt during the first 6 months of 1957, from the Belt points to Kankakee, are in the 3 cents a bushel trucking zone. The adjusted rate from Belt points in that zone would be 14.5 cents, and the Chicago Board of Trade [fol. 31] is of the opinion that the Belt points should be blanketed with this rate because the points are so treated now, and the river prices at the most competitive river elevators, Spring Valley to Morris, are blanketed. This elaborate Chicago Board of Trade proposal is defective in that it begins with the erroneous premise that the Belt bids during the comparison period were higher than river bids, when, in fact, they were not, since they applied to corn at different levels in the transportation chain. Moreover, it contemplates a situation in which shippers by barge can favorably compete with shippers by rail at points on the Belt and permits the railroad to enjoy its geographical advantage only as to corn grown south of the Belt.

Applicants submitted no cost data, but rely on comparative earnings, rate levels, and operating conditions as indicative of the compensativeness of the proposed rate.

During the 8 month period ended August 31, 1957, the corn and corn products movement of General Foods yielded average revenues of \$66.07 per car, 110,076 pounds, and \$1.685 per car-mile for 39.21 miles, from Belt origins to Kankakee; \$403.33 per car, 81,775 pounds, and 47.7 cents



per car-mile for 845.7 miles, from Kankakee to eastern destinations; and \$448.42 per car and 50.69 cents per car-mile for 884.7 miles, from Belt origins to eastern destinations. In the same period, the movement of Evans Milling yielded average revenues of \$59.42 per car, 109,137 pounds, and \$2.38 per car-mile for 24.95 miles, from Belt origins to Kankakee; and \$407.38 per car, and 61.62 cents per car-mile, from Belt origins to eastern destinations, including Ohio, via Kankakee and Indianapolis. The proposed rates did not [fol. 32] apply to Ohio destinations during the period, and excluding such shipments, the car-mile earnings averaged 51.09 cents. For 1955, the average revenues of the New York Central were 40.015 cents per car-mile for its average haul of 236.58 miles. Between 1948 and 1956, inclusive, the average railroad revenue from corn ranged from 73 to 95 cents per short-line car-mile. On the products of agriculture earnings ranged from 42 to 48 cents and on selected grain and grain products (including corn and corn products) 57 to 71 cents. Distances on which the study producing these figures was based were not shown. Actual distances would produce lower earnings, but in many instances actual mileages are close to short-line mileages.

The proposed combinations from Belt origins to 18 representative destinations via Kankakee, and the reshipping rates from Chicago to eastern destinations, reflect averages of 14.4 and 13.1 percent, respectively, of the Docket 28300 first-class rates. On ex-lake grain, from Buffalo and Oswego, N. Y., and Erie, Pa., to tidewater ports, applicants maintain export proportional rates which range from 6.3 to 9.5 percent of the same first-class rates. Also, from certain Belt origins to New York City and Boston, Mass., applicants maintain export rates on grain which are lower than the combination of proportionals over Kankakee. For example, from Dwight, the combination domestic rates are 59.5 and 61.5 cents to New York City and Boston, respectively, and the export rate is 54.5 cents to both ports.

The operating distance of the New York Central from Chicago to Kankakee is 75 miles compared with the weighted average distance of 38.3 miles from Belt points to Kankakee. The aggregate distances from Belt to Kankakee, via truck to the river, thence barge to Chicago, and

thence the New York Central to Kankakee exceeded by 133 to 797 percent the distance from Belt points to Kankakee, and to certain eastern destinations. The distances from Chicago via Kankakee exceeded by 3.73 to 20.61 percent the distances from Belt points via Kankakee. The line of another carrier Illinois Central Railroad, from Chicago to Kankakee is more direct than that of the New York Central. The proposed rates apply from Belt points to eastern destinations via either Kankakee or Chicago.

The switching of loaded and empty grain cars from and to terminal elevators at Chicago for the transportation of corn to Kankakee, Indianapolis, Paris, and Danville by the New York Central is more complex than its handling of cars at Belt origins for movement to the same destinations. Switching charges absorbed by the New York Central on corn from Chicago to Kankakee during 2 months in 1956 averaged about 2 cents per 100 pounds. Avoidance of this cost item and the shorter weighted average distance from Belt points as compared to the distance from Chicago to Kankakee support the New York Central's contention that handling corn from the Belt points is less expensive than from Chicago. Further support lies in the fact that no additional trains or power units were needed to handle the increased corn traffic from the Belt points, since the regular trains drop off the empties when westbound and pick up the loaded cars when eastbound. The exact extent to which handling is less expensive on the Belt than at Chicago is not shown.

[fol. 34] The New York Central, for its haul from Chicago to Kankakee, assesses the local rate, but upon transit it is credited to the Chicago reshipping rate applicable via Kankakee, out of which it was required to absorb switching charges. At the proposed rate, it receives after transit the full amount of the proposed inbound proportional rate of 5.5 cents for its haul from Belt origins to Kankakee, and avoids the Chicago switching absorption. Thus by handling traffic at the proposed rate its revenues are increased by 7.5 cents per 100 pounds over its previous handling, and its expenses are reduced in accordance with the reduction in

miles from the 75 between Chicago and Kankakee to the lesser weighted average distance of 38.3 miles from Belt points to Kankakee.

The protestants submitted a study of the system average costs<sup>12</sup> of the New York Central and the territorial average costs<sup>13</sup> of the eastern district railroads. On the average 55-ton load, the out-of-pocket costs of the New York Central and the eastern district railroads are 8.56 and 8.57 cents per 100 pounds, respectively, for the weighted average distance of 38.3 miles. On minimum loads of 50-tons and for the simple average distance of 46.4 miles, the out-of-pocket costs range up to 9.66 cents per 100 pounds.

This study is intended to show the proposed proportional rates to Kankakee non-compensatory. It fails in this purpose, primarily because it deals only with the inbound proportional. That rate factor has no independent existence, but is an integral part of the rate which applies on the through transportation from Belt origin, through the milling-in-transit point, to delivery of the corn product at its ultimate destination. Moreover, it is only by application of the through combination that the fourth-section departures subject of this proceeding are created.

Applicants point out that, since rates from each origin to each ultimate destination could be filed as single factor rates (and be no more compensatory than under the present publication), condemnation based on finding the inbound proportional only to be non-compensatory would be tantamount to condemnation arising out of the method of publication.

The authorities cited by the protestants in support of their contention that the issue here concerns a separate component of through rates from the future the lawfulness of which may be passed on independently of the other com-

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<sup>12</sup> Based upon an application of cost formula Rail Form A of the Commission's Sections of Cost Finding.

<sup>13</sup> From our cost Finding Section Statement No. 1-57 applying Rail Form A to expenses of the eastern district railroads, adjusted to reflect current levels.

ponents, are not helpful here. *Great Northern Ry. v. Sullivan*, 294 U.S. 458, was a Section 1 case holding that the through rate must be shown to be unreasonable in order to support a reparation award. *Atchison, T. & S. F. Ry. Co. v. United States*, 279 U.S. 768, condemned a railroad's attempt to increase a local rate to a transit point after the traffic was shipped out of that point by another railroad. *Cairo Board of Trade v. Cleveland, C. C. & St. L. Ry. Co.*, 43 I.C.C. 343, so far as is pertinent, concerned a grain rail center which was unduly prejudiced by the failure of the railroads to accord it reshipping rates comparable to those enjoyed by competitive rail centers. Somewhat similar thereto is *Atlanta Terra Cotta Co. v. Atlanta & W. P. R. Co.*, 151 I.C.C. 45.

[fol. 36] For 1956, Mechling's operating ratio was 91.9 percent, and its average fully distributed costs for the transportation of corn from the six most competitive ports to Chicago was 11.4 mills and 87.93 cents per ton or 4.4 cents per 100 pounds. These expenses are about 10 cents less than the New York Central's average fully distributed costs of 14.33 and 13.57 per 100 pounds on 50-ton and 55-ton loads, respectively, for 46.4 miles, computed by protestants. According to Mechling this difference of approximately 10 cents represents its inherent low cost advantage which must be preserved. The barge carrier is not entitled under the act to have its rates protected from a competing mode of transportation, where, as in this instance, the railroad's efforts to secure traffic do not amount to a destructive competitive practice.

The Chicago Board of Trade and others raise certain issues, principally discrimination against whole corn by the milling-in-transit limitation; discrimination against Chicago by the proposed-rate combination applying over Kankakee when prior thereto rates to the East were made over Chicago; undue preference to the processors of corn by the limitations in the application of the proposed rate to commodities shipped by these processors; and unreasonable routes on the proposed rate combination by the restrictive routes which apply over Kankakee in movements to eastern destinations. Although the New York Central intends to



remove the milling-in-transit limitation, these issues do not directly deal with the fourth-section principles here involved, but are properly matters which may be raised in investigation or complaint proceedings. However, since the proposed rates are effective over Chicago, that point has [fol. 37] the same stature as all other corn processing points in official territory in their application. Moreover, the routes over Kankakee are the same as they were for many years prior to the establishment of the proposed rates, and while limited in their scope as compared to making the inbound rate break on Chicago, there is no indication of undue damage to Chicago.

It is clear that the competitive situation which prevailed prior to the proposed rate between the all-rail and the barge-rail rates on corn from the northern Illinois territory to the East required an adjustment in the all-rail rates, and that such an adjustment requires fourth-section relief. The proposed rates are intended partly to remedy the situation, and the instant application seeks the relief to cover the departures which occur. Before such relief may be granted, applicants must show that the proposed rates are reasonably compensatory and no lower than necessary to meet the competition.

The country elevators in the area were originally set up to do business over all-rail routes, and yet, prior to the proposed rate, the preponderant portion of their business was over barge-rail routes. Except for the handling of government-controlled corn shipped at export rates (which are lower than those in issue), these elevators were relegated, for the most part, to such operation as was necessary to process corn for retail locally, while the elevator operators took on the function of merchandisers employed at taking the corn off the farmer's hands and marketing it at the river. After the proposed rate went into effect, this pattern was changed. Elevators on the Belt discontinued their merchandising business with the sub-terminal river elevators and returned to their former role as rail elevators. Of the [fol. 38] elevators closer to the belt than the river, but which had no facilities on the New York Central, some set up portable equipment on the Belt, while others experienced

reductions and face possible elimination of their business in corn for river shipment. This is to be expected in making the all-rail route competitive with the barge-rail route.

Some diversion of traffic must necessarily result in re-developing a rail movement of corn from the area contiguous to the rail line, and to that extent the barge movement and the business of those connected therewith will be adversely affected. An example of how the competitive situation was altered is seen in the case of the country elevator at Grand Ridge, Ill., which lost some business from farms located between it and the Belt elevator at Streator, 8 miles to the south, but lost no business from farms lying between it and the river elevator at Ottawa, 8 miles to the north. Another country elevator operator at Marsailles, Ill., north of the river, felt no adverse effects from the operation of the proposed rates, notwithstanding that his area of business extends south of the river to within 6 miles of the Belt. Even though he lost some customers, he gained others. It is interesting to note that though this operator was located on the Rock Island, he had no facilities for rail loading because, as he related, there is no incentive to ship by rail, the river rate being what it is.

At the same time the 10 competitive river ports, notwithstanding their loss of traffic to the Belt, increased their shipments of corn to Chicago from 402,105 tons in the period December 15, 1955, to August 30, 1956, to 493,668 tons in the corresponding period the following year during which [fol. 39] time the proposed rates were in effect. It is apparent that while corn grown adjacent to the Belt was attracted to the rails, that grown adjacent to the river remained with the barges. Thus it is evident that the proposed rates are not lower than necessary to meet the barge competition.

The rate and revenue comparisons and cost-saving evidence submitted by the New York Central and its supporters establish the compensativeness of the proposed rates.

We find, upon the record herein, that applicants have shown a special case within the meaning of Section 4 of the act, by virtue of actual and compelling competition; that

the proposed rates are not lower than necessary to meet that competition, do not constitute a destructive competitive practice, are reasonably compensatory, and will not impose an undue burden on other traffic; and that the relief sought would not be disharmonious with the other provisions of the act, would be in the public interest, and is justified.

A fourth-section order granting the relief sought will be entered.

[fol. 40]

#### Fourth Section Order No.\*19346

#### • ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 2, held at its office in Washington, D. C., on the 8th day of June, A. D. 1960:

#### CORN AND CORN PRODUCTS, ILLINOIS TO OFFICIAL TERRITORY

By fourth-section application No. 33955, as amended, carriers parties to the New York Central Railroad Company tariff I. C. C. No. 1169 and Agent H. R. Hinsch's tariff I. C. C. Nos. 4403 and 4499, according as they may participate in the traffic, apply for authority to continue or to establish and maintain the rates hereinafter described without observing the long-and-short-haul provision of Section 4 of the Interstate Commerce Act. A hearing having been held, and full investigation of the matters and things involved in said application having been made, and the division, on the date hereof, having made and filed a report containing its findings of fact and conclusions thereon, which application and report are hereby referred to and made a part hereof:

*It is ordered*, That applicants in No. 33955, as amended, be, and they are hereby, authorized to continue or to establish and maintain over their proposed direct routes, for the transportation of corn products, in carloads, as more fully described in the application, from points in Illinois on that part of the New York Central Railroad Company's Kan-

lakee Belt Line extending from Van's Siding to Moronts, both inclusive, to points in central, trunk-line, and New England territories, rates constructed on the basis described in the application, and to maintain higher rates from and to intermediate points; *Provided*, That the rates from and to such higher-rated intermediate points shall not be increased except as may be authorized by this Commission nor exceed the lowest combination of rates subject to the Interstate Commerce Act.

*It is further ordered*, That all other and further relief prayed by fourth-section application No. 33955, as amended, be, and it is hereby, denied.

The commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the Interstate Commerce Act.

By the Commission, division 2.

HAROLD D. MCCOY,  
Secretary.

(SEAL)



[fol. 41]

## EXHIBIT II TO COMPLAINT

## ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D.C., on the 18th day of November, A.D. 1960.

FOURTH SECTION APPLICATION NO. 33955  
CORN AND CORN PRODUCTS, ILLINOIS TO  
OFFICIAL TERRITORY

Upon consideration of the record in the above-entitled proceeding, petitions, filed July 18, 1960, of protestants for reconsideration of the report of Division 2, decided June 8, 1960, and for further oral argument before the full Commission and replies thereto by applicants and intervenors in support of applicants, filed September 26, 1960;

*It is ordered*, That the petitions be, and they are hereby, denied for the reason that the matters submitted in support thereof do not constitute substantial and material grounds to warrant reopening of this proceeding for reconsideration and reargument.

By the Commission.

HAROLD D. MCCOY,  
Secretary.

(SEAL)

[fol. 42]

## EXHIBIT III TO COMPLAINT

## INTERSTATE COMMERCE COMMISSION

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 FOURTH SECTION APPLICATION NO. 33955  
 CORN AND CORN PRODUCTS, ILLINOIS TO  
 OFFICIAL TERRITORY
 

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Decided .....

Authority to establish and maintain an all-rail proportional rate on corn and corn products to Kankakee, Ill., from origins on the line of the New York Central Railroad Company, Morents to Van's Siding, Ill., inclusive, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, denied.

*Richard J. Murphy, William C. Leiper, and Daniel J. Sweeney* for applicants.

*Freeman Bradford* and *A. C. Shier* for interveners in support of the application.

*Edward B. Hayes, Wilbur S. Legge, Nuel D. Belnap, Harold E. Spencer, Richard J. Hardy, Richard M. Freeman, James V. Springrose, Lawrence Farlow, James C. Scott, I. M. Funk, Ronald E. Tallyn, E. S. Herron, R. D. Erickson, and J. S. Chartrand* for protestants.

 REPORT PROPOSED BY GEORGE A. DAHAN,  
 HEARING EXAMINER

By application, as amended, railroads parties to New York Central Railroad Company's tariff I.C.C. No. 1169 and Agent H. R. Hinsch's tariffs I.C.C. Nos. 4403 and 4499, apply for authority to establish and maintain an all-rail

proportional rate of 5.5 cents,<sup>1</sup> on corn and corn products, minimum 100,000 pounds, from northern Illinois origins on that part of New York Central's Kankakee Belt Line, extending eastward from Moronts to Van's Siding, Ill., to Kankakee, Ill., applicable only on milled-in-transit traffic destined ultimately to points in central, trunk line, and New England territories at present proportional or re-shipping rates from Kankakee to final destination, without observing the long-and-short-haul provision of the Interstate Commerce Act.

[fol. 43] Effective December 15, 1956, the New York Central established over its line direct a proportional rate of 5 cents (subsequently increased to 5.5 cents under Ex Parte 206), on corn and corn products, minimum 100,000 pounds, from the Kankakee Belt origins to Kankakee, restricted to apply on traffic milled-in-transit destined to points at the western termini of eastern trunk lines and points east thereof. At the same time, the through single-factor rates from these origins to final destination were restricted so as not to apply when the combination of the proportional rate to Kankakee and the reshipping rate from Kankakee to final destination is lower. The proportional rate to Kankakee became effective without protest. It was established in the belief that outstanding fourth section orders in connection with the reshipping rates from Kankakee afforded ample relief to cover departures which occurred. Subsequently, applicants learned that restriction of the rate to destinations at the western termini of eastern trunk lines and east thereof created departures at destinations in central territory not authorized by the outstanding orders. Additionally, unauthorized origin departures were also created at Kankakee and other origins north, south, and east thereof, because the combination of proportional rates to and from Kankakee resulted in lower per-car charges than those in connection with the application of the flat or local rates from Kankakee and other intermediate origins. To eliminate the unauthorized destination depar-

<sup>1</sup> Rates are stated in amounts per 100 pounds, include the increase under Ex Parte 206 unless otherwise indicated, and are subject to the increase under Ex Parte 212.

tures, the 5.5-cents proportional rate to Kankakee was extended to apply on the same traffic destined ultimately to [fol. 44] points in central territory effective July 30, 1957, postponed to August 29, 1957. And the instant application was filed for authority to maintain the origin departures resulting from the adjustments effective December 15, 1956 and August 29, 1957. On August 27, 1957, the Commission granted the relief sought temporarily pending final determination of the matter herein. On August 28, 1957, certain protestants brought a court action to set aside the temporary order of the Commission and to enjoin the use of the rates without fourth-section relief. A temporary restraining order was issued on August 28, 1957, making the reduced rate combinations over Kankakee inoperative until November 28, 1957, when the court order was vacated and the court action dismissed. The reduced rate has been in effect since November 28, 1957.

Historically, the rail rates on grain and grain products from northern Illinois to eastern destinations were combination rates over Chicago, Ill., and later when single-factor rates were established they were made equal to the combinations. From 1907 to 1921, the rates on grain products ranged from the same to one cent higher than the rates on grain. Since 1921, the rates on grain products have been uniformly .5-cent higher than those on grain. This differential holds true in respect of the reshipping rates as well as the flat rates. The same reshipping rates apply from both Chicago and Kankakee.

The reduced proportional rate, also herein referred to as the proposed rate, to Kankakee, in connection with the reshipping rates from Kankakee, to eastern destinations, [fol. 45] is to meet the competition of the barge-rail combination rates over Chicago made up of the local barge rates to Chicago and the same rail reshipping rates to eastern destinations. The local barge rates from 10 Illinois River ports<sup>2</sup> to Chicago ranged from 3.5 to 6 cents on December 5, 1957, and effective December 6, 1957, they range from 3.65 to 6.25 cents. There is no milling-in-transit re-

<sup>2</sup> Lockport, Joliet, Morris, Seneca, Ottawa, La Salle, Spring Valley, Hennepin, Henry, and Lacon, Ill.



quirement for the application of the barge-rail combination rates.

In arriving at the original 5-cent proportional rate the weighted average barge rate of 4.625 cents on the barge movement for the period December 16, 1956 to November 11, 1957, from the 10 ports to Chicago was considered as the competitive rate. On the same movement the weighted average barge rate would be 4.825 cents effective December 6, 1957. Including increases under Ex Parte 212, the proportional or proposed rate is 6 cents. This rate has application only in connection with the reshipping rates on grain products insofar as they apply on certain corn products. In the first instance the flat rates on grain from the Kankakee Belt origins to Kankakee and other transit points in official territory is applied on corn. After milling-in-transit at Kankakee or other transit points and reshipment of corn products, the inbound charges are readjusted on the basis of the proportional rate on corn to Kankakee and the reshipping rates on grain products from Kankakee and applied to the outbound movement of corn products. The local rates initially charged to Kankakee or other transit points apply on the weight of the shrinkage or manufacturing loss.

[fol. 46] The Kankakee Belt Line west of Kankakee roughly parallels the Illinois River in northern Illinois. Moronts is on the river about 4 miles from the nearest river port of Spring Valley, Ill., and Van's Siding which is the most distant point from the river is about 32 miles south of its nearest port of Joliet, Ill. The northern Illinois territory produces a surplus of corn. Historically, this corn moved over all-rail routes to eastern destinations. The development of commerce on the Illinois River about 20 years ago started a diversion of the all-rail movement to barge-rail routes extending from river ports to Chicago, Ill., by barge, and thence to eastern destinations by rail. In 1935, 1940, and 1957, respectively, about 1.5, 19, and 59 million bushels of grain, including .7, 16, and 34 million bushels of corn, moved by barge from all Illinois River ports to Chicago. The bulk of the corn movement by barge originates at the 10 river ports which range from 4 to 36

highway miles from the Kankakee Belt origins. The source of the corn are farms ranging up to 40 miles from the ports.

The primary business available to the New York Central at the origin points is grain, predominantly corn, traffic. During 1954, 1955, and 1956, respectively, 467, 729, and 615 carloads of grain, including 305, 533, and 464 carloads of corn originated at the origin points. Most of this rail movement consisted of Commodity Credit Corporation corn<sup>a</sup> which is usually shipped by rail, and is not subject to the same competitive forces as "free" corn.<sup>b</sup> For the 6-, 8-, and [fol. 47] 12-month periods ended June 30, August 31, and December 31, 1957, respectively, 1,915, 2,411, and 2,681 carloads of corn originated at the Kankakee Belt origins.

The 1956 corn crop in the area was somewhat heavier than the 1955 crop. This accounted for a heavier movement in 1957. During the period December 15, 1956 to August 30, 1957, when the reduced rate was in effect the corn movement by barge from the 10 river ports to Chicago amounted to 493,668 tons, including 387,256 tons by protestant A. L. Mechling Lines, Inc.<sup>c</sup> In the corresponding period one year earlier this movement totaled 402,105 tons of which 375,922 tons moved by Mechling. The two ports (Lockport and Joliet) nearest to Chicago are the most distant ports to the Kankakee Belt origins and the barge movement from these ports are not affected by the reduced rate to the same extent as the other ports. Also, from the three ports (Hennepin, Henry and Lacon) south of Moronts the great majority of Mechling's corn business moved to the south in 1956 and to Chicago (north) in 1957. From the five ports primarily affected, Mechling's barge movement to Chicago was lower by 22,928 tons in the period December 15, 1956 to August 28, 1957, than during the corresponding period one year earlier.

Cargill Incorporated, Illinois Grain Corporation, Norris Grain Corporation, W. W. Dewey Company, and Glidden Company, operate sub-terminal elevators at one or more of

<sup>a</sup> Corn under Government control.

<sup>b</sup> Corn available on the open market.

<sup>c</sup> Includes Mechling's wholly-owned subsidiary, Marine Transit Company.

the ports. Cargill's corn purchases at three elevators from the area south of the river dropped from 1,632,092 bushels [fol. 48] in the period December 15, 1955 to August 31, 1956, to 1,171,329 bushels in the corresponding period one year later. From the same area Illinois Grain purchased 854,326 and 365,005 bushels during the first 8 months of 1956 and 1957, respectively. Norris experienced purchase declines in 1957 under 1956 at three elevators. The decline at the one elevator most affected amounted to 646,380 bushels in the first 6 months of 1957 under the first 6 months of 1956. Dewey's purchases from four points in the Kankakee Belt were reduced from 120,000 bushels in the first 8 months of 1956 to 15,000 bushels in the same period of 1957. Glidden's elevators were opened in the fall of 1956. Its limited experience indicates a decline in purchases in the area subsequent to the effectiveness of the proposed rate.

The river sub-terminal elevators are intermediate between the terminal elevators in Chicago and the country elevators in northern Illinois. The sub-terminal elevators are generally operated by the terminal elevators and were established for the accumulation of corn for river movement. With the exception of Dewey which operates both a sub-terminal elevator and a country elevator, this accumulation of corn is through purchase from the country elevators rather than from the farmers. Originally the country elevators sold the corn to merchants or brokers for rail delivery to processors. And their facilities were designed to receive grain from farm wagons and trucks, assemble the grain in carload lots, and load it into rail cars. The advent of river transportation and the establishment of sub-terminal elevators brought about another outlet for the corn gathered [fol. 49] by the country elevators. For its service, the country elevator realizes from 1.5 to 4 cents a bushel. There is little, if any, difference in the country elevator's margin in its sales to buyers for barge or rail movement.

The transportation of corn from the farms to the country elevators is performed in the farmer's own trucks. The corn sold to the river sub-terminal elevators is transported in for-hire trucks either directly from the farms or to a somewhat lesser extent from the country elevators. There

is a small variation in the for-hire truck charge depending upon whether the movements are directly from the farms or from the country elevators. Such charges are based upon distances and are filed and fixed by the Illinois Commerce Commission. They range from 2 to 4 cents a bushel for distances ranging up to 30 miles from elevator to elevator and up to 20 miles from farm to elevator.

The country elevators in a corn producing area base their bids to the farmers on the price at the most advantageous terminal market less transportation costs. Prior to the proposed rate, all the free corn sales of the three supporting country elevators on the Kankakee Belt were made to the sub-terminal river elevators because corn for river transportation commanded higher prices than corn for rail transportation. The higher prices were attributed to the ability of the river sub-terminal elevators to market the corn at lower transportation costs over the barge-rail routes than rail buyers over the all-rail routes. Since the effectiveness of the proposed rates, it became more profitable for these country elevators to ship by railroad and the [fol. 50] farmers benefited by the competitive bidding. Despite their ability to pass on to the farmers the advantage of competitive bids, these country elevators assert that the amount of their business has not increased. Several country elevators with rail facilities from 3 to 11 miles from the Belt have established portable loaders on the Belt.

Of all 11 opposing country elevators, eight are located between the Illinois River and the Kankakee Belt, two are south of the Belt, and one north of the river. The last is on the river and is not served by rail. Although it purchases corn from farmers located as much as 18 miles south of the river or within six miles of the Belt, its business has not been affected by the proposed rate, but its customers south of the river have "been looking toward that rate (proposed rate) pretty strong." The 10 other country elevators are served by rail lines other than the Belt, and have been adversely affected by the proposed rate. The majority have lost business. Most seriously affected was one located at the same point as an elevator served by the Belt. Its business exceeded 250,000 bushels in each of



the years 1955 and 1956, but shipped only 31,000 bushels in 1957\* and nothing in January 1958. In addition to a decline in business, 1957 under 1956, one of these elevators shipped a portion of its 1957 business through an elevator on the Belt at a cost of over half its commission in such sales. While the total business of one elevator increased 1957 over 1956, its rail shipments declined from 258 car-[fol. 51] loads in 1956 to 78 carloads in 1957, representing a reduction in rail shipments of about 324,000 bushels. And one elevator believed that the proposed rate would be a temporary situation, and to retain its farmer customers it absorbed the difference, amounting to \$1,800, between bids on corn in rail cars at competitive Belt elevators and bids in cars at its elevator.

The proposed rate has enabled the Belt elevators to outbid by as much as 4 cents a bushel other elevators in the same area, thus disturbing the prior equitable competitive relationship among the country elevators. On January 30, 1958, the prices bid for corn per bushel were \$1.09 in car at Missal, Ill., on the Belt, \$1.04 $\frac{7}{8}$  in car at Kernan, Ill., on another railroad, and \$1.075 in truck at the river. One Belt elevator has advertised in the local papers of certain points served by other railroads that it has lower freight rates and calls upon the corn producers to seek it for a better price. The opposing country elevators are apprehensive of further inroad of their business as their farmer customers become aware of the higher prices for corn in car on the Belt.

The Farmers Grain Dealers Association of Illinois and the Illinois Grain Dealer's Association, each of which has a membership of approximately 300 country elevators with facilities at about 400 rail stations in Illinois, ask for the restoration of the fair competitive position among their members. It is their position that the rate from one station on one railroad must be competitive with the rate from another station on another railroad, that such rail rates should be competitive with other modes of transportation, and that such fourth-section relief as may be necessary

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\* The effectiveness of the proposed rate was enjoined from August 28, 1957 to November 28, 1957.

[fol. 52] should be granted to enable the railroads to compete with the Illinois River barge lines.

Opposed to any fourth-section relief, is the Indiana Farm Bureau Cooperative Association, a federated cooperative of about 86 associations with a total membership, mostly farmers, of about 160,000. This association is a member of both the Board of Trade of the City of Chicago and the Indianapolis Board of Trade, Inc., and operates a 5.5 million bushel elevator located on the New York Central at Indianapolis, Ind., and a 2.5 million bushel elevator in Louisville, Ky. It handles about 50 million bushels of grain annually, about half of which is corn, including a large part which is marketed in official territory. Among the 150 to 200 Indiana shipping points of its member producers are stations on the New York Central from which the rates on milled-in-transit corn to eastern destinations are as much as 10 cents higher than the combination of the proposed rate and the reshipping rates. Since the eastern market price is the same to both the Indiana and Illinois producers, its members must absorb the difference in transportation costs despite the fact that they are less distant and intermediate to the markets, from the Kankakee Belt. This association has not been too concerned about the barge-rail combination rates.

In its study of the competitive situation, the New York Central made inquiries of corn processors at Kankakee, Paris, and Danville, Ill., and Indianapolis, Ind., as well as country elevators on the Belt. Three of the processors, General Foods Corporation at Kankakee, Illinois Cereal Mills at Paris, and Evans Milling Company at Indianapolis [fol. 53], support the proposed rate. Until the effectiveness of the proposed rate the corn purchases of General Foods in the northern Illinois territory for rail delivery amounted to about 2.5 carloads a week. After the proposed rate became effective, it received 1,101 carloads during the first 8 months of 1957. In the same period, Illinois Cereal and Evans Milling received 327 and 219 carloads, respectively, from Belt origins. Immediately prior to 1957, Illinois Cereal received only two carloads in 3 years, and Evans Milling did not receive any cars in 15 years, from

Belt origins. Of the 1,915 cars of corn which originated in the Belt during the first 6 months of 1957, 1,326 cars, reflecting 70 percent of the total, were destined to Kankakee, Indianapolis, Paris and Danville, and 548 cars were destined to Chicago. Practically all, if not all, the 1,326 cars consisted of free corn on which the proposed rate would apply, whereas only 31 of the 548 cars to Chicago were free corn. The remainder, 517 cars, to Chicago were Commodity Credit Corporation corn on which the proposed rate would have no application. From the Belt origins to Chicago, the free corn movement aggregated 270 carloads in the 12-month period ended October 30, 1956, and 45 cars in the same period a year later.

According to General Foods, the proposed rate has enabled rail buyers to bid for corn in the country market in competition with river buyers, but a difference in the price to the former still exists in favor of the river subterminal elevators. It computes differences of 9.28 and .63 cents a bushel before and after the effectiveness of the proposed rate, respectively. To determine the prices to the farmer at the river elevator at Morris, Ill., and at the [fol. 54] country elevator at Blair, Ill., it used a Chicago market price of \$1.15 a bushel, from which it subtracted costs of 14.32 cents a bushel on rail originations prior to the proposed rate leaving a price to the farmer at the country elevator of \$1.0068 a bushel; 5.67 cents a bushel on rail originations since the effectiveness of the proposed rate leaving a price to the farmer at the country elevator of \$1.0933 a bushel; and 5.04 cents a bushel on river originations leaving a price to the farmer at the river elevator

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\* Reflects the proportional rail rate from Blair to Chicago of 20.5 cents and 3 percent tax converted to 11.82 cents a bushel plus country elevator handling of 2.5 cents a bushel.

\* Reflects the proposed rate from Blair to Kankakee of 5.5 cents and 3 percent federal tax converted to 3.17 cents a bushel, plus country elevator handling of 2.5 cents a bushel.

\* Reflects the barge rate from Morris to Chicago of 4.4 cents and 3 percent federal tax converted to 2.54 cents a bushel, plus elevation at river of 1.5 cents a bushel (2.68 cents per 100 pounds) and country elevator mark-up of 1 cent a bushel.

of \$1.0996 a bushel. The difference of .63 cents in favor of barge bids does not appear to be representative. A bid as little as .5-cent higher would succeed. It is doubtful that the Belt elevators would shift their sales from river buyers to General Foods when the bid at the river is .63 higher. Based on the actual daily bids at five Belt points and five river points during the 7-month period ended July 31, 1957, the Belt bids averaged 2.02 cents a bushel higher than the river bids. Although the record indicates that differences in moisture discount scales are reflected by different levels in bids so that the actual price of corn [fol. 55] would be about equal, and that the bids of General Foods and those of the Chicago market were on moisture discounts of 1 and 1.5 cents a bushel, respectively, for each .5 percent of moisture from 15.5 to 23 percent, there is no evidence that the compared actual bids at the river and at the Belt were at different scales so as to require an adjustment in the determination of a difference between such bids. If the actual bids were on such different discount scales, then the difference would favor the Belt by an additional 3 to 4.5 cents a bushel.

[fol. 56] General Foods, as well as the New York Central, would offset the costs of trucking from farm or country elevator to the river elevator on barge movements with trucking from farm to country elevators on rail movements on the grounds that since the farmer bears the trucking costs from farm to either the river sub-terminal elevator or the Belt country elevator, the same expense would be incurred in movements from the farm to equi-distant river elevators and country elevators. But this ignores the movement from country elevator to river elevator of corn which previously moved from farm to country elevator, the relative location of the river elevator which ranges up to 40 miles from the farms and the country elevator which is generally within 6 miles of the farms, the use of for-hire trucks in farm to river elevator movement as contrasted with farmer wagon or truck carriage in farm to country elevator movement, and applicants propose to place shippers on the Belt in a position to compete with the barge lines. The truck charge from the shipper location to the



river is a factor which must be considered. At the same time the trucking directly from farm to river elevator of the major part of the river movements avoids certain private carriage which is of some expense to the farmer and should not be completely ignored.

[fol. 57] Cargill, Illinois Grain, and Glidden, compares barge shipper costs of 18.5,<sup>10</sup> 17.7,<sup>11</sup> and 18 cents<sup>12</sup> per 100 pounds, respectively with the proposed rate of 5.5 cents, and point out that these barge costs make no provision for insurance, shipper preference for country run unmixed corn, and the usual water carrier disabilities, such as dependency on weather and added handling. Since the proposed rate applies in connection with the reshipping rates to the east, the barge costs must include all items necessary to place barge and rail shipments in the same position. In purchases of corn from the country elevator, the river subterminal elevator does not know whether shipment, in whole or in part, will be made from the country elevator or directly from the farm. Its bid to the country elevator is predicated upon shipment from the country elevator. In the circumstances, these river elevators include the trucking expenses from country elevator to river elevator in their comparisons. They exclude expenses for trucking from farm to country elevator, country elevator margin for its service, and inbound inspection, which are the same in [fol. 58] both barge and rail shipments. In respect of the

<sup>10</sup> Includes trucking from Missal, Ill., country elevator to Ottawa, Ill., river elevator of 5.36 cents, transfer truck to barge of 2.68 cents, barge rate Ottawa to Chicago of 4.95 cents, stevedoring at Chicago of 1.15 cents, transfer barge to rail at Chicago of 4.01 cents, and outbound inspection of .45 cents.

<sup>11</sup> Includes trucking from Dwight, Ill., country elevator to Morris, Ill., river elevator of 5.4 cents, transfer truck to barge of 2.7 cents, barge rate Morris to Chicago of 4.4 cents, and stevedoring and transfer barge to rail at Chicago of 5.2 cents.

<sup>12</sup> Includes nominal trucking from country elevator to Seneca, Ill., river elevator of 3 cents a bushel, transfer truck to barge of 1.5 cents a bushel, barge rate Seneca to Chicago of 2.63 cents a bushel, stevedoring at Chicago of .75 cents a bushel, and transfer barge to rail at Chicago of 2.25 cents a bushel, a total of 10.13 cents a bushel of 18 cents per 100 pounds.

country elevator margin, their view coincides with the evidence of the country elevators as contrasted with the comparison of General Foods which appears to understate the country elevator mark-up on barge shipments. To place a barge shipment in the same position as a rail shipment at the proposed rate, the shipper incurs expenses for the services of elevation or transfer from truck to barge and from barge to rail, trimming or stevedoring, and outbound inspection, which services are not required in rail shipment. A so-called trimming in the loading of a rail car is a part of the usual loading operation and entirely different than the trimming or stevedoring a barge. Nor may the fact that Evans Milling purchased about 25 percent of its corn from an Indianapolis terminal elevator, thus requiring an intermediate elevation, be considered as comparable to the elevation or transfer from barge to rail which is necessary on all barge corn to Chicago.

The Board of Trade of the City of Chicago is of the opinion that the proposed rate is too low, and it seriously doubts that a rate of 18 cents based upon barge movement costs to the shipper submitted by the river elevators, would enable applicants to meet the barge competition. Its knowledge of the respective barge and rail services costs to the shipper is limited. But since the price is a controlling factor in the shipper selection of the transportation mode, it believes that an equitable basis would be one predicated upon the pricing of the corn at the river elevator and on the Belt. Based upon the average difference of 2 cents [fol. 59] a bushel in the rail corn bid on the Belt over the barge corn bid at the river and the trucking charges ranging from 2 to 4 cents a bushel from country elevators to river elevators, the proposed rate, according to the Chicago Board of Trade, would be lower than necessary to meet barge competition by amounts of 7, 8, 9, 10, and 10.5 cents per 100 pounds from Belt points in the 2, 2.5, 3, 3.5, and 4 cents a bushel trucking zones, respectively. The Belt and river average bids for the 7-month period ended July 31, 1957, would be approximately the same, differing only from .02 to .2 cents a bushel, by subtracting the amounts believed necessary to meet barge competition from the Belt bids

and the trucking charges from the river bids. The proposed rate adjusted by increases, from 7 to 10.5 cents depending upon the trucking zone would produce rates ranging from 12.5 to 16 cents; the 12.5-cent adjusted rate would apply from Belt points nearest the river and most affected by barge competition, but most distant to Kankakee, and the 16-cent adjusted rate would apply from points most distant to the river and least affected by the competition, but nearest to Kankakee. Both the simple average of 46.4 miles and weighted average distance of 38.3 miles based upon the corn movement on the Belt during the first 6 months of 1957, from the Belt points to Kankakee, are in the 3 cents a bushel trucking zone. The adjusted rate from Belt points in that zone is 14.5 cents, and the Chicago Board of Trade is of the opinion that the Belt points should be blanketed with this rate because the points are so treated now, and [fol. 60] the river prices at the most competitive river elevators, Spring Valley to Morris, are blanketed.

Applicants submitted no cost data, and the New York Central relies on certain comparative earnings, rate levels, and operating conditions as indicative of the compensativeness of the proposed rate. Based upon the minimum weight and the weighted average distance of 38.3 miles, the proposed rate would yield \$55 per car, \$1.436 per car-mile, and 2817 mills per ton-mile. These earnings are compared with earnings of \$60 per car, \$1.017 per car-mile, and 20.3 mills per ton-mile which would be produced by a rail rate on corn, minimum 100,000 pounds, from Winsted, Minn., to Port Cargill, Minn., 59 miles. The compared rate, however, is an intrastate rate schedule to expire on December 5, 1958, and the local interstate rate is higher.

During the 8 months period ended August 31, 1957, the corn and corn products movement of General Foods yielded average revenues of \$66.07 per car, 110,076 pounds, and \$1.685 per car-mile for 39.21 miles, from Belt origins to Kankakee; \$403.33 per car, 81,775 pounds, and 47.7 cents per car-mile for 845.7 miles, from Kankakee to eastern destinations; and \$448.42 per car and 50.69 cents per car-mile for 884.7 miles, from Belt origins to eastern destinations. In the same period, the movement of Evans Milling yielded average revenues of \$59.42 per car, 109,137 pounds,

and \$2.38 per car-mile for 24.95 miles, from Belt origins to Kankakee; and \$407.38 per car, and 61.62 cents per car-mile from Belt origins to eastern destinations, including Ohio, via Kankakee and Indianapolis. The proposed rates in connection with the reshipping rates did not apply to [fol. 61] Ohio destinations during the period, and excluding such shipments, the car-mile earnings averaged 51.09 cents. For 1955, the average revenues of the New York Central were 40.015 cents per car-mile for its average haul of 236.58 miles. In 1956, the average railroad revenue from corn was 95 cents per short-line car-mile. Actual distances would produce lower earnings, but in many instances actual mileages are very close to short-line mileages.

The combination of the proposed rate and the reshipping rates from Belt origins to eastern destinations via Kankakee, and the same reshipping rates from Chicago to eastern destinations, reflect averages of 14.4 and 13.1 percent, respectively, of the Docket 28300 first-class. On ex-lake grain, from Buffalo and Oswego, N. Y., and Erie, Pa., to tidewater ports, applicants maintain export proportional rates which range from 6.3 to 9.5 percent of the Docket 28300 first-class. Also, from certain Belt origins to New York City and Boston, Mass., applicants maintain export rates on grain which are lower than the combination of proportionals over Kankakee. For example, from Dwight, the combination rates are 59.5 and 61.5 cents to New York City and Boston, respectively, and the export rate is 54.5 cents to both ports. The proposed rate at issue however is a short-haul gathering rate on domestic traffic.

The operating distance of the New York Central from Chicago to Kankakee is 75 miles compared with the weighted average distance of 38.3 miles from Belt points to Kankakee. The aggregate distance from Belt points to Kankakee, via truck to the river, thence barge to Chicago, [fol. 62] and thence the New York Central to Kankakee exceeded by 133 to 797 percent the distance from Belt points to Kankakee, and to certain eastern destinations. The distances from Chicago via Kankakee exceed by 3.73 to 20.61 percent the distances from Belt points, via Kankakee. The line of another applicant, Illinois Central Railroad, from Chicago to Kankakee is more direct than that of the New



York Central, and the combination of the proposed rate and reshipping rates applied from Belt points to eastern destinations via Kankakee and Chicago.

The switching of loaded and empty grain cars from and to terminal elevators at Chicago for the transportation of corn to Kankakee, Indianapolis, Paris, and Danville by the New York Central is somewhat more complex than its handling of cars at Belt origins for movement to the same destinations. The more complex handling forms the primary basis for the opinion of the New York Central's operating witness that the handling of corn from Belt origins is less expensive than from Chicago. This witness, however, has never made a cost study, and could give no idea as to the extent one handling is more expensive than the other. In addition, no consideration was given to service factors, such as expense of freight agents at Belt origins which is chargeable solely to grain traffic, since grain is the only movement at most of the points.

The New York Central assumes that prior to the proposed rate, corn grown on farms adjacent to its lines was trucked to the river, barged to Chicago at which it was purchased by General Foods and shipped over its lines to Kankakee where it was transmitted and the product shipped [fol. 63] to eastern destinations over its lines. For its haul from Chicago to Kankakee the billing rate was assessed which upon transit was credited to the Chicago reshipping rate which applies via Kankakee. And it was required to absorb switching charges averaging 2 cents per 100 pounds at Chicago on corn it transported to Kankakee, Indianapolis, Paris and Danville. At the proposed rate, it receives after transit the amount of the proposed rate, 5.5 cents, for its haul from Belt origins to Kankakee, and avoids the Chicago switching absorption. It asserts that it is benefited in the amount of 7.5 cents per 100 pounds by handling traffic at the proposed rate over its previous handling. The average switching absorption is based upon 312 carloads of corn from Chicago terminal elevators on connecting rail lines to General Foods at Kankakee during April, May and June 1956. A substantial portion of this switching was performed by railroads in which the New York Central has a proprietary interest. Although the New

York Central representative testified that the "majority" of the corn from Chicago to Kankakee was backed by ex-barge billing "because I have looked at those bills," he was unable to further detail the extent of the Chicago to Kankakee movement backed by ex-barge billing. The policy of General Foods is to buy corn with ex-rail billing behind it, if possible, and it purchases Chicago elevator corn only when it cannot meet its requirements with country-run corn. In 1956, Cargill sold General Foods 410,000 bushels of corn from its Chicago elevator and 295,000 bushels off the rail track at Chicago. All this corn has ex-rail billing behind it. [fol. 64] The protestants submitted a study of the system average costs<sup>13</sup> of the New York Central and the territorial average costs<sup>14</sup> of the eastern district railroads. On the average 55-ton load, the out-of-pocket costs of the New York Central and the eastern district railroads are 8.56 and 8.57 cents per 100 pounds, respectively, for the weighted average distance of 38.3 miles. On minimum loads of 50-tons and for the simple average distance of 46.4 miles, the out-of-pocket costs range up to 9.66 cents per 100 pounds. These average costs are refined to reflect identifiable service characteristics of the traffic, viz: Type of car; net weight of load; way train gross ton-mile costs; length of haul; empty return; and a part of the spiral service costs.

The average costs are susceptible to greater refinement, but this is solely within the competence of the New York Central, and there is indication of record that the average costs tend to understate the costs of handling corn traffic on the Belt. On brief, the New York Central contends that the method of applying the cost formula results in a gross overstatement of its costs. To support its contention it readjusts the terminal switching and freight train car costs and arrives at an out-of-pocket costs of 6.9 cents per 100 pounds on 55-ton loads for 38.3 miles. The readjusted

<sup>13</sup> Based upon the application of cost formula Rail Form A of the Commission's Section of Cost Finding.

<sup>14</sup> From Section of Cost Finding Section Statement No. 1-57 which is based upon the application of Rail Form A to expenses of eastern district railroads as a group, and adjusted to reflect current levels.

terminal switching costs are related to the size of the Belt points based upon Statement 4-54 of the Commission's [fol. 65] Cost Finding Section, and the readjusted freight-train car costs reflect an origin operation of one car day. But Statement 4-54 is not of record, and there is evidence from recent cost studies of the eastern railroads that the cost of handling of grain in the territory is somewhat higher than the territorial average. Even if the readjustment was valid and accepted, the proposed rate would still be somewhat less than the readjusted costs.

For 1956, Mechling's operating ratio was 91.9 percent, and its average fully distributed costs for the transportation of corn from the six most competitive ports to Chicago was 11.4 mills and 87.93 cents per ton or 4.4 cents per 100 pounds. These expenses are about 10 cents less than the New York Central's average fully distributed costs of 14.33 and 13.57 per 100 pounds on 50-ton and 55-ton loads, respectively, for 46.4 miles, computed by protestants. According to Mechling this difference of approximately 10 cents represents its inherent low cost advantage which must be preserved.

The Chicago Board of Trade raises certain issues, principally discrimination against whole corn by the milling-in-transit limitation; discrimination against Chicago by the proposed-rate combination applying over Kankakee when prior thereto rates to the East were made over Chicago; undue preference to the processors of corn by the limitations in the application of the proposed rate to commodities shipped by these processors; and unreasonable routes on the proposed rate combination by the restrictive routes which apply over Kankakee in movements to eastern destinations. Although the New York Central intends to remove the milling-in-transit limitation, these issues do not directly deal with the fourth-section principles here involved, but are properly matters which may be raised in investigation or complaint proceedings. And in view of the conclusions herein, they need not be further considered.

It is clear that the competitive situation which prevailed prior to the proposed rate between the all-rail and the barge-rail rates on corn from the northern Illinois territory to the East required an adjustment in the all-rail rates,

and that such an adjustment requires fourth-section relief. The proposed rate is purportedly aimed to partly remedy the situation, and the instant application seeks the relief to cover the departures which occur. Before such relief may be granted, applicants must show that the proposed rate is reasonably compensatory and no lower than necessary to meet the competition. That they have not done so is crystal clear.

The Indiana Farm Bureau Cooperative has not been concerned with the barge-rail combination rates, and it is reasonable to assume that its attitude toward the proposed-rate combinations would have been the same if those combinations were no lower than the barge-rail combinations. Although the country elevators in the area were originally set up to do business over all-rail routes and prior to the proposed rate the preponderant portion of their business was over barge-rail routes, there existed an equality of competitive opportunity between these elevators. The proposed rate disrupted this competitive equality. After the proposed rate, the Belt elevators discontinued their business with the sub-terminal river elevators and the competitive country elevators incurred substantial losses in, and face an elimination of, their business. This, despite the limitations in the application of the proposed-rate combinations. I do not believe that the business changes would have been so drastic if the proposed-rate combinations were no lower than the barge-rail rate combinations. The river elevators would not have been eliminated from doing business with the Belt elevators, and the competitive country elevators would have been better able to hold on to their farmer customers with little if any, injury to their business with the river elevators. The placing of the all-rail routes on a competitive level with the barge-rail routes would necessarily result in some diversion of traffic, but measured from the extent of the diversion at the proposed rate, it appears that an extension of the proposed basis without a milling-in-transit limitation and with the combination made over Chicago would completely eliminate barge competition. In the final analysis, the higher rail bids for corn and the higher barge shipper costs since the effectiveness of the proposed rate are clear indications



that the proposed rate is lower than necessary to meet the barge competition.

The revenue comparisons and cost saving evidence submitted by the New York Central and its supporters are insufficient to establish the compensativeness of the proposed rate. This is particularly true in the light of the cost evidence presented by protestants. Although the New York Central contends that the reduced proportional rate is compensatory in of itself and presented some evidence in that respect, it and its supporters take the position that the real issue is whether the combination of the reduced proportional rate and the reshipping rates are compensatory. To support their position they cite, principally, *Lane Company, Inc. v. Louisville & Nashville Railroad Co., et al.*, 292 I.C.C. 76, *Board of Railroad Commissioners v. Atchison T. & S. F. Ry. Co.*, 34 I.C.C. 111, and *Great Northern Ry. Co. v. Commodity Credit Corporation*, 77 Fed. Sup. 780. But these cases are not in point. The first deals with a matter of reparation in which case the through charge must be considered. The second holds that all factors of the through rate must be considered to determine whether fourth-section relief is required. It is appropriate here only insofar as the departures are in connection with both proportional factors, there being no departures in connection with the reduced proportional rate from Moronts to Kankakee. And the third case defines a proportional rate. Here the issue concerns a separate component of through rates for the future; the lawfulness of which may be passed on independently of the other components. *Great Northern Ry. v. Sullivan*, 294 I.C.C. 458; *Atchison, T. & S. F. Ry. Co. v. United States*, 279 U. S. 768; *Cairo Board of Trade v. Cleveland, C. C. & St. L. Ry. Co.*, 46 I.C.C. 343; *Atlantic Terra Cotta Co. v. Atlanta & W. P. R. Co.*, 151 I.C.C. 45. In the absence of specific [fol. 69] costs, the average costs, with understatements, as well as possible overstatements considered, are of sufficient probative value to determine the compensativeness of the proposed rate. The conclusion that the proposed rate will not meet the bare out-of-pocket costs is inescapable.

The Chicago Board of Trade, Farmers Grain Dealers Association, Illinois Grain Dealers Association, and certain opposing country elevators are of the opinion that a

rate of 14.5 cents based upon the corn pricing situation would be reasonable. Cargill, Illinois Grain, and Indiana Farm Bureau Cooperative express the view that a rate not less than 15 cents measured by the transportation costs to the shipper, by the corn pricing situation, and by past barge and Belt rate relationships (the barge rate was from 8 to 10 cents lower than the Belt rate in 1940) can be expected to move substantial quantities of corn on the Belt. Mechling and several opposing elevators suggest as an alternative rate level for the proposed rate a rate no lower than 15.5 cents if the barge and rail modes of transportation are to remain equally competitive and the inherent low cost advantage of water transportation is to be preserved. There is merit to each of these proposals, but there are other issues raised by the Chicago Board of Trade which are not here determined which applicants should consider in any future proposal. Accordingly, the matter of a future proposal will be left to applicants.

The examiner finds that sufficient justification for the relief prayed has not been presented. The application should be denied.

[fol. 70]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Civil Action No. 61 C 169

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND THE  
INTERSTATE COMMERCE COMMISSION—Filed April 10, 1961

The United States of America and the Interstate Commerce Commission, defendants in the above-styled proceeding, for answer to the complaint say:

I.

Admit the allegations of paragraph 1 that the complainants seek to enjoin the orders of the Commission specified

therein pursuant to the designated sections of the United States Code. Deny so much of paragraph 1 which alleges that the order of the Commission, Division 2, entered June [fol. 71] 8, 1960, (Exhibit 1 to complaint, unnumbered page following page 26) constitutes permanent action of the Commission. The defendants aver that the order of June 8, 1960, is a permissive order of indefinite duration subject to modification or vacation by the Commission when it deems necessary. Defendants further aver that whether the assailed rates would be prohibited by section 4 of the Interstate Commerce Act, 49 U.S.C. section 4 is argumentative in nature to which no answer is required.

## II.

Admit the allegations of paragraph 2 except that the defendants aver that the allegations thereof do not constitute sufficient basis for a cause of action against the lawful orders of the Commission.

## III.

Admit the allegations of paragraph 3 except that the defendants respectfully direct the court's attention to the challenged report of the Commission (Exhibit 1 to the complaint) for a complete and accurate statement regarding the extent of plaintiffs' competition prior to and subsequent to the effective date of the assailed rates. Defendants further aver that the allegation that plaintiffs face destruction and loss of their investments is argumentative in nature to which no answer is required.

## IV.

Admit so much of paragraph 4 which alleges that plaintiffs participated in the proceeding before the Commission to the extent indicated therein. Defendants deny the allegation that plaintiffs are "proper plaintiffs by reason of the provisions of 49 U.S.C. section 2323 and 5 U.S.C. section [fol. 72] 1009." Defendants aver that plaintiffs may not maintain this suit for failure to exhaust their administrative remedies.

## V.

Admit the allegations of the first sentence of paragraph 5. Defendants aver that the remaining allegations of paragraph 5 are argumentative in nature to which no answer is required. Defendants respectfully direct the attention of the court to the challenged report of the Commission for a complete and accurate statement of the rate situation.

## VI.

Deny the allegations of paragraph 6 which contend that Division 2 and the entire Commission erroneously found that the assailed rates were reasonably compensatory pursuant to section 4 of the Interstate Commerce Act, 49 U.S.C. section 4. Defendants aver that the Commission's findings and orders are lawful and valid in all respects. Defendants further aver that the remaining allegations are argumentative in nature to which no answer is required.

## VII.

Defendants deny that the finding of the Commission that the proposed rates are not lower than necessary to meet the competition is invalid for any of the reasons alleged in paragraph 7. Defendants aver that the Commission's finding is supported by substantial evidence of record and is lawful in all respects. Defendants further aver that the remaining allegations of paragraph 7 are argumentative in nature which require no answer.

## VIII.

Answering the allegations of paragraph 8 defendants deny that the Commission's findings concerning the inherent advantages of plaintiff A. L. Mechling's Barge Lines transportation service are in error for any of the reasons set forth in paragraph 8. Defendants aver that the Commission's findings are supported by substantial evidence of record and are valid and lawful in all respects. Defendants further aver that the remaining allegations of paragraph 8 are argumentative in nature which require no answer.



## IX.

Answering the allegations of paragraph 9 the defendants deny that the Commission erred in refusing to permit the plaintiffs to attempt to establish that certain rail divisions were discriminatory in contravention of section 3(4) of the Interstate Commerce Act, 49 U.S.C. section 3(4). Defendants aver that issues arising under section 3(4) of the Interstate Commerce Act do not fall within the scope of this proceeding which arises under section 4 of the Interstate Commerce Act; that the order of the Commission expressly provides "The Commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the Interstate Commerce Act"; that section 13 of the Interstate Commerce Act, 49 U.S.C. section 13 and the Commission's regulations thereunder provide the appropriate remedy for plaintiffs to raise section 3(4) issues before the Commission. Defendants further aver that in this respect plaintiffs cannot maintain this suit for failure to exhaust their administrative remedies. Further answering paragraph 9, the remaining allegations are argumentative in nature which require no answer.

## X.

[fol. 74] Defendants admit the allegations of paragraph 10 that the Commission's examiner heard the witnesses, and that the examiner made the quoted statement in his proposed report. Defendants deny that the Commission erred in granting the application of the rail carriers for relief under the provisions of section 4 of the Interstate Commerce Act. Defendants further aver that the remaining allegations are argumentative in nature which require no answer.

## XI.

Defendants deny the allegations of paragraph 11. Defendants aver that any diversion of corn resulting from the lawful competition permitted by the assailed order of the Commission does not constitute any injury legal or otherwise sufficient to institute or maintain this suit.

## XII.

Answering the allegations contained in paragraphs 12 and 13, the defendants deny the same. Further answering the complaint the defendants aver that the action of the Commission is valid and lawful in all respects, and the defendants further aver that any injuries which may occur to plaintiffs resulting from the lawful and valid orders of the Commission do not constitute any legal basis for instituting or maintaining this suit, and that plaintiffs have no legal standing upon which to maintain this cause of action.

Except as expressly admitted here, the defendants deny each and all of the allegations in said complaint to the extent that they are inconsistent with the averments of this answer or inconsistent with the assailed orders of the Commission.

[fol. 75] Wherefore, the defendants pray that the complaint be dismissed and that the relief prayed for by the plaintiffs be denied.

Robert W. Ginnane, General Counsel; H. Neil Garson, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Lee Loevinger, Assistant Attorney General; John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.; Robert Tieken, United States Attorney, Chicago, Illinois, Attorneys for the United States of America.

Certificate of service (omitted in printing).

• • • • •

[fol. 78]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION  
Civil Action No. 61 C 169

[Title omitted]

ANSWER OF THE NEW YORK CENTRAL RAILROAD  
COMPANY—Filed April 20, 1961

" Comes now The New York Central Railroad Company, intervenor as defendant herein, and, in answer to the complaint, states:

First Defense

Plaintiffs cannot maintain this suit for lack of standing to sue.

Second Defense

Plaintiffs may not maintain this suit for failure to exhaust their administrative remedies.

Third Defense

Further answering the complaint but without waiver of [fol. 79] the above defenses, The New York Central Railroad Company

I

Admits the allegations contained in paragraph 1 of the complaint except for the allegation that in the absence of specific authorization by the Interstate Commerce Commission such rates would be prohibited by Section 4 of the Interstate Commerce Act, 49 U.S.C. Sec. 4, and except for the allegation that the orders of the Interstate Commerce Commission are final orders, which allegations are denied.

II

Admits the allegations contained in paragraph 2 of the complaint.

## III

Admits that plaintiffs Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company and Mazon Farmers Elevator are elevator operators located in the corn producing area in Northern Illinois but denies all other allegations contained in paragraph 3 of the complaint.

## IV

Admits that plaintiffs participated in the proceedings before the Interstate Commerce Commission in its Fourth [fol. 80] Section Application Docket No. 33955 as alleged in paragraph 4 of the complaint but denies that plaintiffs are proper plaintiffs herein for the reason that they have no standing to maintain this suit.

## V

Denies the allegations contained in paragraphs 5 through 13 of the complaint.

## VI

The New York Central Railroad Company avers that Fourth Section Order No. 19346 which complainants seek to have set aside is a permissive order of the Interstate Commerce Commission authorizing relief from the long and short haul prohibition of Section 4 of the Interstate Commerce Act, 49 U.S.C. Sec. 4, so that the New York Central is enabled to maintain its long established and lawful grain rate structure while providing a much needed service at rates from country elevators in the area served by its line of railroad west of Kankakee, Illinois, which are to some degree competitive with barge rates. The establishment of these competitive rates has benefited the farmers through higher prices for corn as a result of competition between purchasers of corn for barge movement and for rail movement. The competitive rail rates from the stations west of [fol. 81] Kankakee to eastern destinations, which the Commission found to be compensatory and not lower than necessary to meet the actual and compelling competition of the barge-rail routes of plaintiff Mechling and other



barge lines, did not adversely affect the barge movement of corn from the Illinois River Ports competitive with the rail routes from New York Central stations west of Kankakee. The Commission found that the 10 competitive ports "increased their shipments of corn to Chicago from 402,105 tons in the period December 15, 1955, to August 30, 1956 to 493,668 tons in the corresponding period the following year during which time the proposed (assailed) rates were in effect."

## VII

The New York Central Railroad Company further avers that the orders and actions of the Interstate Commerce Commission here under attack are valid and lawful in all respects, and denies each and every allegation to the contrary set forth in the complaint, and except as herein expressly admitted, this defendant denies each and all allegations in the complaint.

Wherefore, this defendant, The New York Central Railroad Company, prays that the relief sought in the complaint be denied and that the complaint be dismissed with costs assessed against the plaintiffs.

Richard J. Murphy, Attorney for The New York Central Railroad Company, 1225 LaSalle Street. Station, Chicago 5, Illinois.

[fol. 82] Certificate of service (omitted in printing):

[fol. 86]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION

Civil Action No. 61 C 169

[Title omitted]

ANSWER OF THE McNABB GRAIN COMPANY, LOSTANT GRAIN COMPANY, MISSAL GRAIN COMPANY, FEDERAL NORTH IOWA GRAIN COMPANY, UNION HILL FARMERS ELEVATOR COMPANY, HERSCHER GRAIN COMPANY, M. P. FERRIS, EDWARD CAHILL, E. G. NIELSEN, ROBERT E. DIEMER, FRANK GIBBONS, ISAAC BARRETT, PRISCILLA FARMERS COOPERATIVE GRAIN COMPANY, AND PAYNE-STOTLER GRAIN COMPANY—  
Filed April 20, 1961

Come now the McNabb Grain Company and the other parties enumerated above, defendants herein, and file their answer to the complaint. The said defendants:

I.

Admit the allegations contained in Paragraphs 1 and 2 of the complaint.

II

Admit that plaintiffs Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company and Mazon Farmers Elevator are elevator operators located in the corn producing area of Northern Illinois but deny all other allegations contained in Paragraph 3 of the complaint.

[fol. 87]

III

Admit the allegations of Paragraph 4 of the complaint.

IV

Deny the allegations of Paragraphs 5 through 13 of the complaint.

## V

The McNabb Grain Company and the other defendants named herein, for further answer to the complaint herein, aver that the orders and actions of the Interstate Commerce Commission here under attack are valid and lawful in all respects, and deny each and every allegation to the contrary set forth in the complaint, and, except as herein expressly admitted, these defendants deny each and every allegation of the complaint.

Wherefore, these defendants pray that the relief sought in the complaint be denied, and that the complaint be dismissed at plaintiffs' costs.

Leo P. Day, Attorney for the above-named Defendants, 6202 S. Campbell Avenue, Chicago 29, Illinois.

[fol. 88] Certificate of service (omitted in printing).

[fol. 92]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Civil Action No. 61 C-169

A. L. MECHLING BARGE LINES, INC., et al., Plaintiffs,

vs.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE  
COMMISSION, et al., Defendants.

INTERVENING COMPLAINT OF BOARD OF TRADE OF THE  
CITY OF CHICAGO—Filed November 30, 1961

1. This action is brought by the Board of Trade of the City of Chicago, hereinafter sometimes referred to as Board of Trade, under the provisions of 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325, and 5 U.S.C. § 1009, to enjoin, set aside,

annul and suspend a certain order of the Interstate Commerce Commission, hereinafter called the Commission, entitled Fourth Section Order No. 19346, made and entered June 8, 1960, by the Commission, Division 2, in a proceeding docketed as Fourth Section Application No. 33955 and entitled Corn and Corn Products, Illinois to Official Territory. The report of the Commission entered June 8, 1960, is reported at 310 I.C.C. 437. A copy of the said report and order was attached as Exhibit I to the complaint filed herein [fol. 93] by plaintiff A. L. Mechling Barge Lines, Inc., hereinafter referred to as Mechling, and is made a part hereof by reference. Plaintiff Board of Trade in due course filed with the Commission its petition, dated July 14, 1960, for reconsideration by the entire Commission of the report and order of Division 2, which petition for reconsideration was denied by the Commission's order of November 18, 1960, a copy of which order was attached as Exhibit II to the complaint filed herein by Mechling and which is made a part hereof by reference.

2. Plaintiff Board of Trade is a corporation organized and existing under the laws of the State of Illinois. It has operated a commercial exchange in the City of Chicago for more than 100 years, where its members buy and sell grain, grain products, and various other commodities, including corn and corn products. Its members include dealers in and processors of grain and grain products and other commodities as well as operators of grain elevators and storage warehouses handling whole corn in its natural state. Such members are in competition with dealers, processors and warehousemen in other localities such as Kankakee, Illinois and are affected by rates on whole grain and products of those grains in all parts of the United States and particularly, insofar as this action is concerned, in the rates to the East from points and places located on the line of the New York Central Railroad Company which extends westward from Kankakee to Moronts, Illinois, hereinafter referred to as the Kankakee Belt line.

[fol. 94] 3. Fourth Section Order No. 19346 relieved the rail carriers who were parties to the applicable tariffs from



the operation of the long-and-short-haul clause of section 4 of the Interstate Commerce Act. (49 U.S.C. §4), herein-after called the Act, and authorized such carriers to maintain rates for the transportation of corn (provided such corn was milled into certain corn products at some point before final destination) from origins on the Kankakee Belt line to destinations in the East which are lower than the rates which such carriers contemporaneously maintain for the transportation of similar commodities from intermediate origins, the shorter hauls being included within the longer hauls. The carriers had applied to the Commission for such relief in Fourth Section Application No. 33955. Plaintiff Board of Trade filed a timely protest against the granting of such relief. A hearing on said application was held from January 29, 1958 to February 4, 1958. Plaintiff Board of Trade actively participated in the hearing as a protestant. Plaintiff Board of Trade also actively opposed the granting of such relief by the filing of a brief and a reply to the exceptions taken by applicants to the proposed report of the Examiner recommending denial of such relief, by participating in oral argument, and by filing a petition for reconsideration of the report and order of Division 2, dated June 8, 1960.

4. Plaintiff Board of Trade adopts the allegations of paragraph 5 of the complaint filed herein by Mechling.

[fol. 95] 5. Plaintiff Board of Trade adopts the allegations of paragraph 6 of the complaint filed herein by Mechling.

6. Plaintiff adopts the allegations of paragraph 7 of the complaint filed herein by Mechling.

7. Prior to establishment of the fourth-section departure rates in question, the rates on corn from all stations on the Kankakee Belt line of the New York Central Railroad to the East were made equal to the local rates to Chicago plus the proportional or reshipping rates from Chicago to destinations in the East. The rates on corn products were made in the same manner except that the proportional or reshipping rates were, without exception, made one-half

cent higher per 100 pounds than the proportional or re-shipping rates on corn. This long-established rate adjustment permitted all dealers in, and processors and warehousemen of, corn and corn products in Chicago to compete for business on equal terms with dealers, processors, and warehousemen located at Kankakee, Illinois and various other points.

When the railroads established the special fourth-section departure rates here involved, they limited the application of the rates so that they would not apply on whole corn which was transported from origins on the Kankakee Belt line to the East. The New York Central Railroad which published the reduced proportional rate into Kankakee has failed and refused to make an equal reduction in the rates to Chicago, the unloading port of the alleged barge competition.

[fol. 96] The effect of the failure of the New York Central to publish reduced corn rates to Chicago and the limitation by the railroads of the special fourth-section departure rates to apply only on corn products and not on whole corn discriminates against dealers in, and warehousemen of, whole corn at Chicago by placing them in a position where they cannot compete on an equal basis, as they did for 50 years, for corn originating at Kankakee Belt stations. While processors of corn located at Chicago are able to participate to a limited extent in such rates, they are also discriminated against because they cannot compete for corn originating at stations on the Kankakee Belt line on an equal basis with processors at Kankakee and other points, as they did prior to establishment of the special fourth-section departure rates.

The Board of Trade, therefore, took the position before the Commission, and its evidence clearly showed, that the special fourth-section departure rates resulted in undue prejudice to the Board of Trade and to dealers in, and processors and warehousemen of, grain and grain products at Chicago, in violation of section 3 of the Interstate Commerce Act. A witness for the New York Central Railroad testified before the Commission that the New York Central

would remove the discrimination against whole corn by taking steps as quickly as possible to remove the milling-in-transit limitation. In its report, the Commission noted the intention of the New York Central Railroad to remove the milling-in-transit limitation, but held that the issues [fol. 97] raised by plaintiff Board of Trade did "not deal directly with the fourth-section principles here involved, but are properly matters which may be raised in investigation or complaint proceedings". The Commission, therefore, did not consider or determine the issues raised by Board of Trade under section 3 of the Act.

8. The Commission's Fourth Section Order No. 19346 dated June 8, 1960, is void and unlawful for the following reasons:

(1) The order is capricious, arbitrary, erroneous, and beyond the power of the Commission.

(2) The order is not supported by substantial evidence of record but is contrary to and against the manifest weight of the evidence.

(3) The order is unsupported by findings to show that the Commission has complied with the substantive requirements of law.

(4) The Commission is without power to relieve rail carriers from the operation of the long-and-short-haul provision of section 4 of the Act (49 U.S.C. § 4) if the rates for which such fourth-section relief is granted violate section 3 or some other section of the Act, and such violation is properly put in issue in the proceeding before the Commission to determine whether fourth-section relief should be authorized.

[fol. 98] (5) The Commission erred in holding that it could relieve the rail-carrier applicants from the operation of the long-and-short-haul provision of section 4 of the Act without considering and determining issues raised by plaintiff Board of Trade as to whether the rates for which such relief was sought would violate section 3 of the Act.

(6) The Commission arbitrarily and erroneously failed and refused to consider whether the rates for which the rail-carrier applicants sought fourth-section relief were unduly prejudicial to plaintiff Board of Trade in violation of section 3 of the Act.

(7) The Commission erred in holding that the rail-carrier applicants were not required to show that the inbound proportional rates to Kankakee were compensatory.

(8) The Commission erred in holding that the through combination rates authorized to be established by the order were reasonably compensatory and were no lower than necessary to meet the competition which they were designed to meet.

9. By reason of the unlawful, arbitrary, and capricious action of the Commission in entering its Fourth Section Order No. 19346, dated June 8, 1960, plaintiff Board of Trade has been and will continue to be subjected to irreparable damage if the relief hereinafter prayed for is not granted.

[fol. 99] Wherefore, plaintiff prays:

1. That, pursuant to 28 U.S.C. §§ 1336, 1398, 2284, and 2321-2325, inclusive, there shall be constituted to hear this case a special court of three judges, at least one of whom shall be a circuit judge;

2. That the Court, by interlocutory injunction, enjoin and restrain the operation of Fourth Section Order No. 19346, dated June 8, 1960, pending final hearing and determination of this action;

3. That, upon final hearing of the cause, the Court adjudge that Fourth Section Order No. 19346 is unlawful, void, beyond the power of the Commission, arbitrary, capricious, unsupported by essential findings, and against the manifest weight of the evidence, and that a judgment be entered setting aside, annulling, suspending, and perpetually enjoining the operation of said order;



4. That plaintiff Board of Trade have such other and further relief as may be deemed proper by the Court.

Board of Trade of the City of Chicago by Harold E. Spencer, Richard M. Freeman of Belnap, Spencer, Hardy & Freeman, One North La Salle Street, Chicago 2, Illinois, Central 6-0204, Attorneys for Intervening Plaintiff, Board of Trade of the City of Chicago.

[fol. 100]

[File endorsement omitted]

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

Civil Action No. 61 C 169

[Title omitted]

**ANSWER OF McNABB GRAIN COMPANY, LOSTANT GRAIN COMPANY, MISSAL GRAIN COMPANY, FEDERAL NORTH IOWA GRAIN COMPANY, UNION MILL FARMERS ELEVATOR COMPANY, HERSCHER GRAIN COMPANY, M. P. FERRIS, EDWARD CAHILL, E. G. NIELSEN, ROBERT N. DIEMER, FRANK GIBBONS, ISAAC BARRETT, PRISCILLA FARMERS COOPERATIVE GRAIN COMPANY and PAYNE-STOTLER GRAIN COMPANY, AS INTERVENING DEFENDANTS, TO INTERVENING COMPLAINT OF THE BOARD OF TRADE OF THE CITY OF CHICAGO—Filed December 27, 1961**

Come now the above-named intervening defendants, and for answer to the intervening complaint of the Board of Trade of the City of Chicago, respectfully state:

**I**

They admit the allegations of paragraphs 1, 2, and 3 of the intervening complaint.

## II

They deny the allegations of paragraphs 4, 5, and 6 of the intervening complaint, adopted from paragraphs 5, 6, and 7 [fol. 101] of the complaint filed by Mechling Barge Lines, Inc., in this cause.

## III

They deny the allegations of paragraphs 7, 8 and 9 of the intervening complaint.

## IV

Further answering the intervening complaint herein, these intervening defendants aver that the orders and actions of the Interstate Commerce Commission here complained of are lawful and valid in all respects, and they deny each and every allegation to the contrary set forth in the intervening complaint and, except as herein expressly admitted, these intervening defendants deny each and every allegation of the said intervening complaint.

Wherefore, the above-named intervening defendants pray that the relief sought in the intervening complaint be dismissed with costs assessed against intervening plaintiffs.

Leo P. Day, Attorney for above-named Intervening Defendants, 6202 S. Campbell Avenue, Chicago 29, Illinois.

Certificate of service (omitted in printing).

[fol. 103] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Civil Action No. 61 C 169

[Title omitted]

ANSWER OF THE NEW YORK CENTRAL RAILROAD COMPANY TO  
INTERVENING COMPLAINT OF BOARD OF TRADE OF THE CITY  
OF CHICAGO—Filed December 28, 1961

Comes now The New York Central Railroad Company  
and in answer to the intervening complaint of Board of  
Trade of the City of Chicago, states:

First Defense

Intervenor as plaintiff cannot maintain this suit for lack  
of standing to sue.

Second Defense

Intervenor as plaintiff cannot maintain this suit for fail-  
ure to exhaust its administrative remedies.

[fol. 104] Third Defense

Further answering the intervening complaint, but with-  
out waiver of the above defenses, The New York Central  
Railroad Company:

I

Admits the allegations contained in paragraphs 1, 2, and  
3 of the intervening complaint.

II

Denies the allegations of paragraphs 5 through 7 inclu-  
sive of the complaint filed by Mechling Barge Lines, Inc.,  
which are adopted by the intervenor Board of Trade of

the City of Chicago in paragraphs 4 through 6 inclusive of the intervening complaint.

### III

Denies the allegations contained in paragraph 7 of the intervening complaint. Paragraph 7 of the intervening complaint is lengthy and argumentative in nature, and therefore is denied in its entirety.

### IV

Denies the allegations contained in paragraphs 8 and 9 of the intervening complaint.

### V

The New York Central Railroad Company avers that Fourth Section Order No. 19346 which complainants seek to have set aside is a permissive order of the Interstate Commerce Commission authorizing relief from the long and [fol. 105] short haul prohibition of Section 4 of the Interstate Commerce Act, 49 U.S.C. Sec. 4, so that the New York Central is enabled to maintain its long established and lawful grain rate structure while providing a much needed service at rates from country elevators in the area served by its line of railroad west of Kankakee, Illinois, which are to some degree competitive with barge rates. The establishment of these competitive rates has benefited the farmers through higher prices for corn as a result of competition between purchasers of corn for barge movement and for rail movement. The competitive rail rates from the stations west of Kankakee to eastern destinations, which the Commission found to be compensatory and not lower than necessary to meet the actual and compelling competition of the barge-rail routes of plaintiff Mechling and other barge lines, did not adversely affect the barge movement of corn from the Illinois River Ports competitive with the rail routes from New York Central stations west of Kankakee. The Commission found that the 10 competitive ports "increased their shipments of corn to Chicago from 402,105 tons in the period December 15, 1955, to August 30, 1956 to 493,668 tons in the corresponding period the following year



during which time the proposed (assailed) rates were in effect."

[fol. 106]

# VI

The New York Central Railroad Company further avers that the orders and actions of the Interstate Commerce Commission here under attack are valid and lawful in all respects, and denies each and every allegation to the contrary set forth in the complaint, except as herein expressly admitted, this defendant denies each and all allegations in the complaint.

Wherefore, The New York Central Railroad Company prays that the relief sought in the intervening complaint be denied and that the complaint be dismissed with costs assessed against intervening plaintiffs.

Richard J. Murphy, Attorney for The New York Central Railroad Company, 1225 LaSalle Street Station, Chicago 5, Illinois.

Certificate of service (omitted in printing).

[fol. 108]

[File endorsement omitted]

IN THE UNITED STATE DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION.

Civil Action No. 61 C 169

[Title omitted]

ANSWER OF THE UNITED STATES OF AMERICA AND THE INTER-  
STATE COMMERCE COMMISSION TO THE INTERVENING COM-  
PLAINT OF THE BOARD OF TRADE OF THE CITY OF CHICAGO—  
Filed December 28, 1961.

The United States of America and the Interstate Commerce Commission, defendants in the above-styled proceeding, for answer to the intervening complaint of the Board of Trade of the City of Chicago, say:

**I.**

Admit the allegations of paragraph 1.

**II.**

Admit the allegations of paragraph 2 except that the Court is respectfully referred to the report of the Commission, Division 2, dated June 8, 1960 (original complaint, Exhibit 1) for a complete and accurate statement of the [fol. 109] competitive situation as related to the members of the Board of Trade of the City of Chicago.

**III.**

Admit the allegations of paragraph 3.

**IV.**

Answering the allegations of paragraphs 4, 5 and 6, defendants adopt for their answer paragraphs V, VI, and VII of their original answer filed in response to the original complaint by A. L. Mechling Barge Lines, Inc., et al.

**V.**

Answering the allegations of paragraph 7, defendants aver that the allegations are argumentative in nature which require no answer, and in this respect the Court is referred to the report of the Commission, Division 2, for a complete statement regarding the allegations made before it by the Board of Trade of the City of Chicago. Defendants further aver that the order of the Commission, Division 2, dated June 8, 1960 (original complaint, Exhibit 1) specifically states:

The Commission does not hereby approve any rates filed under this authority, all such rates being subject to complaint, investigation, and correction if in conflict with any provision of the Interstate Commerce Act.

Defendants further aver that insofar as the intervenor's complaint alleges rate discrimination, that intervenor has

not exhausted its administrative remedies pursuant to Section 13 of the Interstate Commerce Act, 49 U.S.C. Section 13.

[fol. 110]

# VI.

Deny each and every allegation of paragraphs 8 and 9.

Further answering the allegations of paragraph 9, the defendants aver that the action of the Commission is valid and lawful in all respects, and that any injuries which may occur to the intervening plaintiff by reason of the lawful and valid orders of the Commission do not constitute any legal basis for maintaining this cause of action.

Except as expressly admitted here, the defendants deny each and all of the allegations in said complaint of intervenor to the extent that they are inconsistent with the averments of this answer or inconsistent with the assailed orders of the Commission.

Wherefore, the defendants pray that the intervening complaint be dismissed and that the relief prayed for by the intervening plaintiff be denied.

Robert W. Ginnane, General Counsel; H. Neil Garson, Associate General Counsel, Interstate Commerce Commission, Washington 25, D. C., Attorneys for the Interstate Commerce Commission.

Lee Loevinger, Assistant Attorney General; John H. D. Wigger, Attorney, Department of Justice, Washington 25, D. C.; James P. O'Brien, United States Attorney, Chicago, Illinois, Attorneys for the United States of America.

[fol. 111] Certificate of service (omitted in printing).

[fol. 112]

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

No. 61 C 169

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A. L. MECHLING BARGE LINES, INC., et al.,

v.

UNITED STATES OF AMERICA,  
INTERSTATE COMMERCE COMMISSION, et al.

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OPINION—September 18, 1962

Before Kiley, Circuit Judge, and Hoffman and Austin,  
District Judges.

This is a suit by Mechling Barge Lines, Inc., a common carrier, and several grain elevator operators served by barges, to set aside an order of the Interstate Commerce Commission. The order continued in existence a reduced rail rate for corn and corn products transported on the New York Central Belt Line. The Chicago Board of Trade was permitted to intervene as a plaintiff and the New York Central Railroad and several grain elevator operators on its Belt Line were permitted to intervene as defendants.

The Belt Line west of Kankakee, Illinois, roughly parallels the Illinois River on which the barges operate. The barge lines and elevators served by them are in competition with the Belt Line and elevators served by it for the business of transporting corn from northern and central Illinois to destinations on the eastern seaboard. Some farmers sell their corn to elevators for transportation by barge to an east-west railroad and others sell theirs to elevators for transportation by the north-south Belt Line to a connecting east-west railroad or to merchants in Chicago. The transportation rates are of course very important in the competition.

Prior to the published New Kankakee all-rail combination rate, the through one-factor rates for grain and grain prod-



ucts from Streator on the Kankakee Belt Line to New York [fol. 113] were 72.5¢ per cwt.; the Chicago combination from stations on the Kankakee Belt Line consisted of a local rate of 23¢ to Chicago, plus the 49.5¢ reshipping rate east, or 72.5¢ per cwt.; the Kankakee combination rate from stations on its Belt Line to Kankakee and reshipping to the east was also composed of the same rate factors. Thus, the through one-factor rates, the Chicago combination and the Kankakee combination, were all equal.

The proposed new Kankakee combination reduced the rate on corn and corn products from stations on the Kankakee Belt Line to 6¢ on corn milled-in-transit for the purpose of meeting the barge competition on the Illinois River, plus a reshipping rate of 49.5¢ beyond Kankakee to the east. The local, or 6¢, rate was to apply only when the product was destined for shipment to eastern destinations. The local, or 6¢, rate was not applicable to whole corn, nor was the rate to Chicago reduced although the Kankakee combination was available to Chicago processors via Kankakee. Application of the new Kankakee combination resulted in a charge less for the longer than for the shorter distance of transportation in that a lower charge from stations west of Kankakee to the east was effected than resulted from Kankakee and intermediate origins to the same destinations.

The New York Central Railroad applied to the Commission for approval, to obviate the violations of 49 U.S.C.A. Section 4,<sup>1</sup> of a proposed rate. Plaintiffs and the Board of Trade protested the application. The Commission granted temporary authority for immediate application of the rate, but ordered a hearing.

The scope of review to be accorded this order is conceded by all litigants to be governed by the Administrative Procedure Act, 5 U.S.C.A., particularly Section 1009(e).<sup>2</sup>

<sup>1</sup> 49 U.S.C.A. Section 4. Long and short haul charges; competition with water routes.

<sup>2</sup> Section 1009(e) provides for the scope of judicial review of agency action to ensure that such action is not unlawfully withheld or unreasonably delayed, or not in accordance with law, procedural or substantive, and that such action is warranted in fact and supported by substantial evidence.

[fol. 114] Because no dispute exists as to the standards to be applied, this court will allude briefly to the basic concept of such review. In *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 140 (1938), the scope of review is stated to be as follows:

“ \* \* \* Only questions affecting constitutional power, statutory authority, and the basic prerequisite of proof can be raised. If these legal tests are satisfied, the Commission's order becomes incontestable. *Interstate Commerce Comm. v. Illinois Central R. Co.*, 215 U.S. 452, 470; *Interstate Commerce Comm'n v. Union Pacific R. Co.*, 222 U.S. 541.”

Plaintiffs claim error in the refusal of the Examiner and the Commission to admit evidence that the proposed rate was discriminatory, unjust and unreasonable, in violation of the Transportation Act; and that the rate failed to preserve the inherent advantage that the National Transportation Policy<sup>4</sup> gives the water carrier. The evidence was excluded for the reason that it was not appropriate in this “Fourth Section” proceeding although it would be pertinent upon a complaint under Section 13(1)<sup>5</sup> or a Commission investigation under Section 15(1).<sup>6</sup>

[fol. 115] Plaintiffs argue that the Examiner and Commission were bound not to grant the application under Section 4 if to do so involved violation of the other sections noted. We are referred to the Commission's conclusion that granting the application “would not be disharmonious with the other provisions of the Act,” to show what the plaintiffs contend is an inconsistency.

<sup>4</sup> 49 U.S.C.A. Section 15(1).

<sup>5</sup> The declared national transportation policy is to provide, preserve and promote the “fair and impartial regulation of all modes of transportation \* \* \* to recognize and preserve the inherent advantages of each,” in order to ensure a national transportation system adequate to meet the needs of commerce and national defense. 49 U.S.C.A. note preceding Section 1.

<sup>6</sup> 49 U.S.C.A. Section 13(1).

<sup>7</sup> 49 U.S.C.A. Section 15(1).

We may disregard that conclusion as surplusage and we see no error in the exclusion of the evidence of violation of other sections of the Act. The relief granted is permissive only and the evidence offered was not relevant in this Fourth Section proceeding. *United States v. Merchants & M. Traffic Ass'n*, 243 U.S. 178 (1916): Due regard was given to the policy and statutory scheme of the Act within the limits afforded by Section 4 and under that Section the Commission is not required to make specific ultimate findings that a rate is lawful and not discriminatory. The water carrier and other plaintiffs have failed to utilize the provisions of sections of the Act which afford the Commission the proper scope for such determination. *United States v. Merchants & M. Traffic Ass'n*, 242 U.S. 178, 188 (1916); *Koppers Co. v. United States*, 132 F. Supp., 159, 163 (D.C. Pa., 1955); *Florida Citrus Comm'n v. United States*, 144 F. Supp. 517, 526 (D.C. Fla., 1956); *Seatrains Lines v. United States*, 168 F. Supp. 819, 825 (D.C.N.Y., 1958).

The Commission found that the "competitive situation which prevailed prior to the proposed rate between the all-rail and barge-rail rates" needed an adjustment under Fourth Section relief. It required a showing that the proposed rates are "reasonably compensatory and no lower than necessary to meet the competition." It found that the evidence that the proposed rate was compensative and set forth the details supporting that finding, and concluded that the New York Central had shown "a special case within the [fol. 116] meaning of Section 4' of the Act by nature of actual and compelling competition," and that the rate was no lower than necessary to meet that competition, was not

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Section 4 of the Transportation Act provides:

" . . . That upon application to the Commission and after investigation, such carrier, in special cases, may be authorized by the Commission to charge less for longer than for shorter distances for the transportation of . . . property . . . but in exercising the authority conferred upon it by this proviso, the Commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed; and no such authorization shall be granted on account of merely potential water competition not actually in existence; . . ."

destructively competitive and would not impose an undue burden on other traffic.

The question raised upon these findings and conclusions is whether the Commission was correct in considering the entire combination rate within the compensatory test of Section 4, or whether, as the Hearing Examiner did, it should have confined such test to the local rate from Moronts to Kankakee, i.e., the 6¢ rail charge for the trip from the western origins of the Kankakee Belt Line to Kankakee. Admittedly, the only rate competitive to the barge route is the local or proportional rate to Kankakee, there having been no change in the 49.5¢ reshipping rate to the east. However, as the Commission emphasized, the 6¢ charge is not collected separately. When shipments originate west of Kankakee they are shipped to Kankakee via the local or flat rate of 23¢ and only when there is a reshipment for corn milled-in-transit to points east of Kankakee will the 6¢ rate be applied. Thus, on reshipment east, there is adjustment made giving recognition to through shipping by reducing the flat or local rate to the 6¢ figure. Consequently, the 6¢ does not exist as a separate charge, but exists only when the combination rate comes into being and a departure from the prohibition of Section 4 occurs when the 49.5¢ reshipping rate is applied. It is clear from the legislative history of this section that Congress was [fol. 117] concerned with the long-haul being reasonably compensatory to the carrier and that the Commission so find to grant Section 4 relief. See *Detroit Board of Trade v. Grand Trunk Railway*, 2 I.C.C. 199, 202 (1888); *Imperial Coal Co. v. Pittsburgh & L.E. R. Co.*, 2 I.C.C. 436, 445 (1889); and *Sheldon Axle & Spring Co. v. Lehigh R.R. Co.*, 53 I.C.C. 43, 44 (1919). The Commission was correct in considering the combination rate and not the single 6¢ proportional.

The final question is whether the report and the findings and conclusions are supported by substantial evidence in the record as a whole. A departure from Section 4 is accorded only in special cases. The record is replete with exhibits and testimony which show that prior to the changed rate almost all free corn, as distinguished from government corn, grown in the geographical area involved was shipped via barge to Chicago and thence by rail to its



eastern termini. This obvious disparity of corn shipment was found to exist by the Hearing Examiner and the Commission. 310 I.C.C. 438-441. That a special case exists by virtue of actual and compelling competition has been recognized. *In re Louisville & Nashville R.R. Co.*, 1 I.C.C. 31, 78 (1887); *Intermountain Rate Cases*, supra; *Skinner & Eddy Corp. v. United States*, 249 U.S. 557 (1919); *Nepheline Syenite from Ontario, Canada to the East*, 308 I.C.C. 561, 564-565 (1959).

A reasonably compensatory rate was defined by the Commission in the *Transcontinental Cases of 1922*, 74 I.C.C. 48, 71, as follows:

" . . . We are of the opinion and find that in the administration of the fourth section the words 'reasonably compensatory' imply that a rate properly so described must (1) cover and more than cover the extra or additional expenses incurred in handling the traffic to which it applies; (2) be no lower than necessary to meet existing competition; (3) not be so low as to threaten the extinction of legitimate competition by water carriers; and (4) not jeopardize the appropriate return on the value of carrier property generally, as contemplated in Section 15(a) of the act."

[fol. 118] These criteria have received judicial approval. See *Dixie Carriers v. United States*, 143 F. Supp. 844 (D.C. Tex., 1956). In the instant case compensative earnings, rate levels and operating costs were submitted to support the compensativeness of the proposed rate. 310 I.C.C. 437, 448-449. This was a proper formula to support the Commission's findings. *Fed. Power Comm'n v. Natural Gas Pipeline Co.*, 315 U.S. 575, 586 (1942); *United States v. Northern Pacific Ry. Co.*, 288 U.S. 490, 500 (1933); *Youngstown Sheet & Tube Co. v. United States*, 295 U.S. 476, 480 (1935); *City of Harrisonburg v. Chesapeake & O. Ry. Co.*, 34 F. Supp. 64, 644-645 (D.C. Va. 1940); *Tidewater Association Oil Co. v. A.T. & S.F. Ry. Co.*, 278 I.C.C. 586, 589; *Summer Co. v. Erie R. Co.*, 262 I.C.C. 43, 46. In finding that the rate was no lower than necessary, the Commission also examined the bid prices of the two modes of transportation and the effect they had on those country elevators located between the Illinois River and the Belt.

In finding that the rate was not destructive of competition nor unduly burdensome, the Commission had before it evidence of the amount of corn shipped via the two modes of transportation in the periods here in question.

In scrutinizing the evidence upon which the order is premised, the court will not consider the "expediency or wisdom of the order, or whether, on like testimony it would have made a similar ruling." *Interstate Commerce Comm'n v. Union Pacific R. Co.*, 222 U.S. 541, 547, 548 (1911); *Virginian Railway Co. v. United States*, 272 U.S. 658, 663 (1926); *United States v. Pierce Auto Lines*, 327 U.S. 515, 536 (1945), but will consider only whether in the record as a whole there is substantive evidence to support the order. 5 U.S.C.A. Section 1009(e); *Universal Camera Corp. v. Labor Board*, 340 U.S. 474 (1950).

There is no challenge of the detailed facts underlying the findings or conclusions and we find that there is the requisite substantial basis for the findings and conclusions. *Rochester Tel. Corp. v. United States*, 307 U.S. 125, 140.

[fol. 119] We conclude that the order in question was within the statutory power of the Commission, that it is supported by findings and conclusions based on substantial evidence, and that no prejudicial error occurred in the hearings before the Examiner and Commission. For these reasons we think the complaint should be dismissed. The order of dismissal is being entered this day.

Date: September 18, 1962.

Edward P. Hayes and Wilbur Legg, Mechling Barge, 135 S. LaSalle Street (3).

Richard M. Freeman and Harold E. Spencer, Chicago Board of Trade, One N. LaSalle (2).

Robert W. Ginnane, General Counsel, Interstate Commerce Commission, Washington 25, D.C.

John H. D. Wigger, Dept. of Justice, Washington 25, D.C.

Richard J. Murphy, New York Central, 1225 LaSalle Street Station (5).

Leo P. Day, Elevator Operator defendants, 6202 S. Campbell Avenue (29).

[fol. 120]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

61 C 169

A. L. MECHLING BARGE LINES, INC., et al.,

v.

UNITED STATES OF AMERICA, INTERSTATE COMMERCE  
COMMISSION, et al.

JUDGMENT—September 18, 1962

The above entitled cause having come on for final hearing before a duly constituted district court of three judges convened pursuant to Sections 2284 and 2326 of Title 28, United States Code, and the Court having considered the pleadings and the record before the Commission, and the arguments and briefs of counsel, and the Court being fully advised in the premises and having filed its opinion, it is hereby

Ordered, Adjudged and Decreed that the relief prayed for in the complaint be, and it is hereby, denied, and the complaint is dismissed, plaintiff to pay the costs.

Dated this 18th day of September, 1962.

Roger J. Kiley, Judge, United States Court of Appeals; Julius J. Hoffman, Judge, United States District Court; Richard B. Austin, Judge, United States District Court.

[fol. 122]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

Civil Action No. 61 C 169

[Title omitted]

NOTICE OF APPEAL OF A. L. MECHLING BARGE LINES INC.,  
ET AL. TO THE SUPREME COURT OF THE UNITED STATES  
—Filed November 16, 1962

I.

Notice is hereby given that A. L. Mechling Barge Lines Inc., Ira Bookwalter, Cullom Cooperative Grain Company, Charles Treasure, Griswold Grain Company, and Mazon Farmers Elevator, plaintiffs above named, hereby appeal to the Supreme Court of the United States from the final order dismissing the complaint herein entered in this action on September 18, 1962.

This appeal is taken pursuant to 28 U.S.C.A., Sections 1253 and 2101(b).

II.

The Clerk will please prepare a transcript of the record in this cause for transmission to the Clerk of the Supreme [fol. 123] Court of the United States and include in said transcript the following:

1. Opinion of the Court dated September 18, 1962.
2. Complaint of A. L. Mechling Barge Lines Inc., et al. and all exhibits filed January 31, 1961.
3. Answer of the United States and the Interstate Commerce Commission filed April 10, 1961.
4. Answer of New York Central Railroad Company, intervening party defendant.
5. Answer of McNabb Grain Company, etc., intervenors as parties defendant.



6. Record below as filed by the Interstate Commerce Commission.
7. Intervening complaint of Board of Trade of the City of Chicago.
8. Answer of McNabb Grain Company, et al., intervening parties defendant to complaint of Board of Trade of the City of Chicago.
9. Answer of New York Central Railroad Company to complaint of Board of Trade of City of Chicago.
10. Answer of United States and Interstate Commerce Commission to complaint of Board of Trade of City of Chicago.

### III.

The following questions are presented by this appeal:

1. In a proceeding under Section 4 of the Interstate Commerce Act, enforced and administered so as to give effect to the National Transportation Policy, was it error for the Interstate Commerce Commission to refuse to consider evidence that a separately published inbound factor of a two-factor rail rate was non-compensatory, when only that one factor was subject to the competition claimed as a justification of the Fourth Section departure for which approval was sought, thereby requiring the non-competitive reshipping factor of the rate, which was applicable to the traffic brought to the reshipping point by water, to subsidize the competitive and non-compensatory inbound factor and financing that said non-compensatory, water-competitive rail service with rail revenue from other rail service that is not water-competitive?
- [fol. 124] 2. Is Section 4 of the Interstate Commerce Act applied in accordance with the mandate of the National Transportation Policy when a reduced rail rate departing from the 4th Section is authorized, which rate will divert traffic from water carriers, yet still not increase the net revenue of the railroads proposing such departure but on the contrary will decrease it?

3. In considering whether a combination two-factor rail rate on corn products was compensatory within the meaning of Section 4 of the Interstate Commerce Act, enforced and administered to carry out the National Transportation Policy, was the Interstate Commerce Commission in error in considering the revenue from both factors of the rate and in refusing to consider evidence that the applicant railroads would receive the revenue from the non-competitive reshipping rate factor whether corn was brought to the reshipping point by water or by rail, whereas the inbound rail rate factor would not be sufficient to cover out-of-pocket costs of the applicants on the inbound rail haul?
4. In a proceeding under Section 4 of the Interstate Commerce Act instituted after duly filed protests alleged violations of the National Transportation Policy and of other sections of the act, was it error for the Interstate Commerce Commission to authorize a rate violating Section 4 without considering duly presented evidence, introduced without objection, that such rate would violate such other sections of the Act and the mandate of the National Transportation Policy, and excluding other evidence to like effect?
5. In a proceeding under Section 4 of the Interstate Commerce Act was the conclusion of the Commission that the applicant rail carriers had shown a special case authorizing the establishment of the rate in question (contrary to the examiner's findings) based on requisite findings supported by substantial evidence?

Edward B. Hayes, Wilbur S. Legg, Attorneys for Plaintiffs.

Lord, Bissell & Brook, Of Counsel, 135 South LaSalle Street, Chicago 3, Illinois, Telephone: 346-7475.

[fol. 125] Certificate of service (omitted in printing).

[fol. 126]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

[Title omitted]

Civil Action No. 61-C 169

NOTICE OF APPEAL OF BOARD OF TRADE OF CITY OF CHICAGO  
TO THE SUPREME COURT OF THE UNITED STATES—Filed  
November 16, 1962

I.

Notice is hereby given that Board of Trade of the City of Chicago, intervening plaintiff herein, hereby appeals to the Supreme Court of the United States from the final judgment entered herein on September 18, 1962, which dismissed the complaint herein.

This appeal is taken pursuant to 28 USC, §§ 1253 and 2101(b).

[fol. 127]

II.

The clerk will please prepare a transcript of the record of this case for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. Complaint of A. L. Mechling Barge Lines Inc., et al., and all exhibits attached thereto, filed January 31, 1961.
2. Answer of the United States and the Interstate Commerce Commission, filed April 10, 1961.
3. Answer of The New York Central Railroad Company intervening defendant, filed April 20, 1961.
4. Answer of McNabb Grain Company, et al., interveners as parties defendant, filed April 20, 1961.

5. Record of proceedings before the Interstate Commerce Commission, as filed herein by the Commission.
6. Motion of Board of Trade of the City of Chicago for leave to intervene as a party plaintiff.
7. Order permitting Board of Trade of the City of Chicago to intervene as a party plaintiff, entered November 30, 1961.
8. Intervening complaint of Board of Trade of the City of Chicago, filed November 30, 1961.
9. Answer of McNabb Grain Company, et al., intervening parties defendant to intervening complaint of Board of Trade of the City of Chicago, filed December 27, 1961.

[fol. 128]

10. Answer of The New York Central Railroad Company to intervening complaint of Board of Trade of the City of Chicago, filed December 28, 1961.
11. Answer of the United States and the Interstate Commerce Commission to intervening complaint of Board of Trade of the City of Chicago, filed December 28, 1961.
12. Transcript of proceedings before the Court at hearing on April 2, 1962.
13. Opinion of the Court, filed September 18, 1962.
14. Judgment order, filed September 18, 1962.
15. This notice of appeal.

### III.

The following question is presented by this appeal:

May the Interstate Commerce Commission, over the protest of affected shippers and localities, authorize rail carriers to maintain rates which depart from the long-and-short-haul requirement of section 4 of the Interstate Commerce Act, without considering and determining whether



such fourth-section-departure rates would violate sections 2 and 3 of the Act by causing unjust discrimination and [fol. 129] undue prejudice against such shippers and localities?

Harold E. Spencer, Richard M. Freeman, One North LaSalle Street, Chicago 2, Illinois, Central 6-0204, Attorneys for Board of Trade of the City of Chicago, intervening plaintiff-appellant.

Belnap, Spencer, Hardy & Freeman, Of Counsel.

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[fol. 130] Proof of Service (omitted in printing).

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[fol. 142] Secretary of Interstate Commerce Commission's certificate to the following papers (omitted in printing).

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[fol. 143]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Susp.-12352

NOTICE—August 26, 1957

Petitions have been filed with the Commission requesting suspension of a proportional rate on corn and corn products, carloads, minimum weight 100,000 pounds. Such proposed rate to be applicable from seventeen origins in Illinois to Kankakee, Ill., for application on through traffic to points in Central Territory, as set forth in Supplement 126 to New York Central Railroad Company tariff I.C.C. 1169 to become effective August 29, 1957.

Upon consideration of the matters involved, the Commission, Board of Suspension, today concluded not to suspend the operation of this schedule.

No action has as yet been taken as to Fourth Section application No. 33955.

This action does not constitute approval of the protested schedules. They may be made subject to investigation through formal complaint filed in accordance with the Commission's Rules of Practice.

Robert J. Test, Acting Secretary.

[fol. 144]

BEFORE THE INTERSTATE COMMERCE COMMISSION

WESTERN UNION TELEGRAM

MAC27

M CD172 NL PD=CHICAGO ILL 26=

HON HAROLD D MCCOY, SECRETARY=

INTERSTATE COMMERCE COMMISSION  
WASH DC=

THIS MATTER REQUIRES EXPEDITED HANDLING UNDER THE COMMISSIONS SPECIAL RULES OF PRACTICE STOP RE BOARD OF SUSPENSIONS DECISION NOT TO SUSPEND SUPPLEMENT 126 NYC TARIFF 701-A ICC 1169 A L MECHLING BARGE LINES INC. EMINGTON GRAIN COMPANY, BOOK-WALTER GRAIN COMPANY, CULLOM COOPERATIVE GRAIN COMPANY DALE P. WALSH, CHARLES TREASURE, GRISWOLD GRAIN COMPANY MAZON FARMERS ELEVATOR PETITION COMMISSION TO RECONSIDER ON BASIS OF MATERIALS PREVIOUSLY SUBMITTED TO COMMISSION RE FSA 33955 AND THEIR PETITIONS TO SUSPEND SAID SUPPLEMENT AND FURTHER ON BASIS OF ABSENCE OF ANY ORDER BY FOURTH SECTION BOARD AUTHORIZING FOURTH SECTION DEPARTURES CREATED BY SAID SUPPLEMENT=

EDWARD B HAYES=

[fol. 145]

BEFORE THE INTERSTATE COMMERCE COMMISSION

FOURTH SECTION ORDER No. 18784—August 27, 1957

Corn and Corn Products, Illinois to Official Territory

By fourth-section application No. 33955 as amended, O. E. Schultz, agent, for and on behalf of carriers parties to Agent H. R. Hinsch's tariffs I.C.C. 4403 and 4499 and The New York Central Railroad Company's tariff I.C.C. 1169,

applies for authority to establish and maintain the rates hereinafter described without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act. An investigation of the matters and things involved in the application having been made, which application as amended is hereby referred to and made a part hereof:

*It is ordered*, That applicants in No. 33955 as amended, be, and they are hereby, authorized to establish and maintain over their proposed routes for the transportation of corn and corn products, in carloads, as more fully described in the application, from points in Illinois on The New York Central Railroad Company, Van's Siding to Moronts, inclusive, to points in central, trunk-line and New England territories, rates constructed on the basis described in the application, as proposed therein, and to maintain higher rates from and to intermediate points; *Provided*, That rates from and to such higher-rated intermediate points shall not be increased except as may be authorized by this Commission, nor exceed the lowest combination of rates subject to the Interstate Commerce Act..

*And it is further ordered*, That the relief herein authorized shall continue until the effective date of the further order to be entered after hearing in fourth-section application No. 33955 as amended.

The Commission does not hereby approve any rates that may be filed under this authority, all such rates being subject to complaint, investigation and correction if in conflict with any provision of the Interstate Commerce Act.

By the Commission, Fourth Section Board.

Harold D. McCoy, Secretary.

[fol. 146]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

Washington, D. C.

Susp.-12352

NOTICE—August 27, 1957

Division 2, acting as an appellate division, voted today not to suspend protested schedules naming a proportional rate on corn and corn products, carloads, minimum weight 100,000 pounds, applicable from seventeen origins in Illinois to Kankakee, Ill., for application on through traffic to points in Central Territory, as set forth in Supplement 126 to New York Central Railroad Company tariff I.C.C. 1169 to become effective August 29, 1957.

The Board of Suspension had concluded not to suspend the protested schedules and the action of Division 2 followed the filing of an appeal for reconsideration of the Board's action. The action of the Board of Suspension and of Division 2 does not constitute approval of the protested schedules.

Robert J. Test, Acting Secretary.

[fol. 147]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

Aug 28 '57 197625

## WESTERN UNION TELEGRAM

M CD919 NL PD=CHICAGO ILL 27=

HONORABLE HAROLD D MCCOY=

SECRETARY INTERSTATE COMMERCE  
COMMISSION WASH DC=

THIS MATTER REQUIRES EXPEDITED HANDLING UNDER THE COMMISSION'S SPECIAL RULES OF PRACTICE STOP TODAY FOURTH SECTION BOARD GRANTED TEMPORARY FOURTH SECTION RELIEF ON APPLICATION OF TRAFFIC EXECUTIVE ASSOCIATION EASTERN RAILROADS, ICC NO 33955, E R NO 2386, IN CONJUNCTION WITH SUPPLEMENT 126, NYC TARIFF 701-A, ICC 1169 TO BECOME EFFECTIVE AUGUST 29, 1957 STOP A L MECHLING BARGE



LINES INC EMMINGTON GRAIN COMPANY=BOOK-  
 WALTER GRAIN COMPANY, CULLOM COOPERA-  
 TIVE GRAIN COMPANY, DALE P. WALSH CHARLES  
 TREASURE, GRISWOLD GRAIN COMPANY AND  
 MAZON FARMERS ELEVATOR PETITION THE COM-  
 MISSION TO RECONSIDER THIS ACTION BECAUSE  
 5½ CENTS RATE NOW ILLEGALLY IN EFFECT IS  
 SO LOW THAT IT HAS ALREADY ENABLED KAN-  
 KAKEE BELT ELEVATORS TO BID APPROXI-  
 MATELY 5 CENTS PER HUNDREDWEIGHT MORE  
 FOR CORN THAN RIVER ELEVATORS DO AND TO  
 DIVERT APPROXIMATELY ONE-THIRD OF CORN  
 IN RIVER AREA FROM RIVER ELEVATORS WHICH  
 SHIP VIA MECHLING STOP IT IS EXPECTED THAT  
 VOLUME OF THE DIVERSION WILL SUBSTAN-  
 Tially INCREASE IF THE 5½ CENTS RATE IS AU-  
 THORIZED BY THE COMMISSION AND SHIPPERS  
 CAN DEPEND ON ITS CONTINUED EXISTENCE  
 AND EVEN MORE DURING CORN HARVEST START-  
 ING IN OCTOBER STOP ELEVATOR OPERATOR PE-  
 TITIONERS CAN BUY GRAIN IN COMPETITION  
 WITH KANKAKEE BELT STATIONS ONLY BY BID-  
 DING PRICES WHICH FORCE THEM TO SPECU-  
 LATE ON MARKET FLUCTUATIONS TO OBTAIN  
 SUFFICIENT EXPENSES AND CANNOT CONTINUE  
 IF IT APPEARS THAT 5½ CENTS RATE WILL CON-  
 TINUE IN EFFECT PENDING HEARING ON PRO-  
 PRIETY OF RELIEF STOP RATE IS THUS FAR  
 LOWER THAN IS NECESSARY TO MEET WATER  
 COMPETITION AND WILL SERIOUSLY INJURE  
 PETITIONERS IF PERMITTED TO CONTINUE STOP  
 PETITIONERS PRAY THAT THE COMMISSION  
 DENY FOURTH SECTION RELIEF PENDING HEAR-  
 ING, ORDER RESTORATION OF RATES IN EFFECT  
 [fol. 148] PRIOR TO DECEMBER 15, 1956, AS IN-  
 CREASED BY EX PARTE 206, AND IN ACCORDANCE  
 WITH SECTION 17(8) OF INTERSTATE COMMERCE  
 ACT STAY THE ORDER OF THE FOURTH SECTION  
 BOARD GRANTING FOURTH SECTION RELIEF  
 STOP NOTICE OF PETITION BY TELEGRAPH TO  
 O E SCHULTZ AND BY MESSENGER TO RICHARD  
 MURPHY=

—EDWARD B. HAYES

[fol. 149]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

Washington, D. C.

F. S. A. No. 33955

NOTICE—August 28, 1957

Division 2, acting as an appellate division, voted today to sustain the action of the Fourth Section Board in granting relief from the long-and-short-haul provision of section 4 of the Interstate Commerce Act in connection with rates on corn and corn products, carloads, from origins in Illinois on The New York Central Railroad Company to points in central, trunkline and New England territories.

The action of Division 2 followed the filing of appeals for reconsideration of the action of the Fourth Section Board. The action of the Fourth Section Board and of Division 2 does not constitute approval of the rates. They may be subject to an investigation through formal complaint filed in accordance with the Commission's Rules of Practice.

Robert J. Test, Acting Secretary.

[fol. 150]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

Washington

NOTICE OF HEARING—October 16, 1957

Fourth Section Application No. 33955

Corn and Corn Products, Illinois to  
Official Territory

The above numbered application filed by Agent O. E. Schultz, which seeks authority to establish and maintain rates on corn, and corn products, carloads, from specified points in central territory to specified points in official territory, without observing the long-and-short-haul provision of section 4 of the Interstate Commerce Act, is hereby

assigned for hearing on December 4, 1957, at 9:30 A.M., United States Standard Time, at the U. S. Customs House, 610 South Canal Street, Chicago, Ill., before Examiner Walter L. Baumgartner.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 151]

BEFORE THE INTERSTATE COMMERCE COMMISSION

F. S. A. No. 33955

TM:GB

Washington, 25

NOTICE OF ~~HEARING~~ REASSIGNMENT—November 29, 1957

Fourth Section Application No. 33955

Corn and Corn Products—Illinois to  
Official Territory

Hearing in the above-entitled proceeding now assigned December 4, 1957, at Chicago, Ill., before Examiner W. L. Baumgartner, is cancelled, and this proceeding is reassigned for hearing on December 17, 1957, at 9:30 o'clock a.m., United States Standard Time, at Room 852 U. S. Custom House, 610 South Canal St., Chicago, Ill., before Examiner Albert E. Luttrell.

Postponement at request of protestants due to illness of material witness.

By the Commission.

Harold D. McCoy, Secretary. )

[fol. 152]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

F. S. A. No. 33955

TM:LF

Washington 25

NOTICE OF HEARING—POSTPONED—December 6, 1957

Fourth Section Application No. 33955

Corn and Corn Products, Illinois to  
Official Territory

Hearing in the above-entitled proceeding now assigned December 17, 1957, at Chicago, Ill., before Examiner Albert E. Luttrell, is postponed to a date to be hereafter fixed.

Postponement due to necessary Commission itinerary changes.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 153]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

F. S. A. No. 33955

TM:JC

Washington, D. C.

NOTICE OF HEARING—ASSIGNMENT—December 27, 1957

Fourth Section Application No. 33955

Corn and Corn Products—Illinois to  
Official Territory

The above-entitled proceeding, is assigned for hearing on January 29, 1958, at 9:30 o'clock a. m., United States Standard Time, at Room 852 U. S. Custom House, 610 S. Canal Street, Chicago, Ill., before Examiner G. A. Dahan.

By the Commission.

Harold D. McCoy, Secretary.

[fol. 154] Secretary of Interstate Commerce Commission's Certificate (omitted in printing).



[fol. 156]

BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF CARGILL, INCORPORATED REQUESTING SUSPENSION OF SECTION 4, PAGE 2, SUPPLEMENT 126, THE NEW YORK CENTRAL RAILROAD COMPANY FREIGHT TARIFF 701-A, I.C.C. 1169.—Filed July 17, 1957

Comes now your petitioner, Cargill, Incorporated, and respectfully states:

It is a corporation, organized and existing under the laws of the State of Delaware, with headquarters at 200 Grain Exchange, Minneapolis 15, Minnesota.

It has been and is now engaged in buying, selling, storing and otherwise handling and processing grain, soya beans and other commodities.

Your Petitioner respectfully petitions that Section 4, Page 2, Supplement 126, The New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169, issued by R. T. Waite, Manager Traffic Bureau, be suspended for investigation.

The reasons for this petition for suspension are shown in detail in Petitioners Protest, objecting to the granting of relief from the provisions of the Fourth Section of the Interstate Commerce Act, as sought by Traffic Executive Association-Eastern Railroads in Fourth Section Application—Commission No. 33955, copy of which is attached hereto and made a part hereof.

[fol. 157] Your Petitioner also requests the Commission to summarily order the carriers to cancel the following tariff provisions because of their having been published and now being in effect in violation of Section 4 of the Interstate Commerce Act:

(a) Section 4, Page 40, Supplement 122, The New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169;

(b) Item 279, Page 17 and the concluding part of the Exception in Note 20, which refers to Item 279, Page 11,

both in Supplement 93, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403;

(c) Paragraph B-6 of Exception to Note 45, shown on Page 4, Supplement 38, Central Territory Railroads Tariff Bureau Freight Tariff 535-C, I.C.C. 4499;

(d) Otherwise order, as to all of the rates, provisions and applications herein involved, the restoration of the rate schedules which were in effect prior to December 15, 1956.

Respectfully submitted,

Bernard A. Springrose, General Traffic Manager,  
Registered Practitioner, 200 Grain Exchange,  
Minneapolis 15, Minnesota.

July 15, 1957

Certificate of service (omitted in printing).

[fol. 158]

BEFORE THE INTERSTATE COMMERCE COMMISSION

PROTEST AND PETITION FOR SUSPENSION OF BOARD OF TRADE  
OF THE CITY OF CHICAGO—Filed July 17, 1957

Mr. Harold D. McCoy, Secretary  
Interstate Commerce Commission  
Washington 25, D. C.

Dear Sir:

The Board of Trade of the City of Chicago respectfully protests the following proposed tariff published to become effective July 30, 1957, and petitions the Commission to postpone the effective date thereof and suspend the operation of said schedule, and to enter upon an investigation into and concerning the reasonableness and propriety thereof:

Supplement 126 to New York Central Railroad Company Tariff 701-A, I. C. C. No. 1169

In support of its protest the petitioner shows:

## I

This petition is made in behalf of the Board of Trade of the City of Chicago, a corporation existing by and under the laws of the State of Illinois, maintaining a grain exchange in that city where its members deal in various commodities including grain, grain products, by-products of grain and related articles to which this statement is directed. Its members move these commodities into and out of the market via barge and rail and are vitally interested in rates and charges that affect their traffic from [fol. 159] origins in the State of Illinois and adjacent territories, destined to points in the Central Freight Association Territory.

## II

## General Statement

To clearly set forth the New York Central's origin stations we have shown on Map "A", in Appendix "A" attached hereto, a section of Northern Illinois with those stations on a heavy black line between Moronts, Ill., and Kankakee, Ill. Also shown is another heavy line designating the river route of the Illinois Waterways in the same territory. Map "B" is an enlargement showing the New York Central's Kankakee Belt Line in detail.

Supplement 126 to New York Central Tariff 701-A, here protested, involves the movement of Corn Products from origins in Illinois located on the New York Central's Kankakee Belt Line from Moronts, Ill., to Van's Siding, Ill., ultimately destined to points in the Central Freight Association Territory. This supplement consists of a title page and one page of content matter as shown on pages 1 and 2 in the Appendix. While page 2, opposite the circle 400 reference mark, shows the application of rates to other than the Central Territory, this petition of suspension is directed solely to the addition of "Central Territory" as underscored thereon, denoting an extension of its application to the Central Territory. Its purpose is to meet truck and barge competition from the same origin territory to the Central Territory which presently moves on an aggregate of charges including; trucking from farm or country eleva-

tor to the river port; elevation thereat; the barge rate to Chicago; and the established rail proportional rate from Chicago to the final destination in C.F.A. territory. Therefore proper consideration of the competitive situation re- [fol. 160] quires an examination of *all costs* incurred in the movement. The New York Central has not done this. They merely take the barge rate to Chicago and the proportional rate therefrom and claim that to be the basis they must meet. Stated differently, since the proportional rate from Chicago to the C.F.A. territory is the same from Kankakee, the N.Y.C. is publishing a  $5\frac{1}{2}\text{¢}$  (X-206) rate from all stations Moronts to Van's Siding to Kankakee, to which the rail proportional rate is added. No consideration has been given to the other charges or costs necessarily incurred in the truck-barge-rail movement in arriving at their  $5\frac{1}{2}\text{¢}$  competitive rate to the reshipping point. Therefore, they have gone below the competitive rate and the effect thereof will be to divert *all of the business* away from the barge lines, and other western railroads operating in the area to the line of the New York Central constituting an "unfair and destructive competitive practice."

### III

#### Violation of Section 5a of the Interstate Commerce Act

Supplement 126 to New York Central's tariff 701-A, I.C.C. No. 1169, was issued on June 28, 1957 to become effective July 30, 1957 without observance of approved Rules of Procedure required by Section 5a of the Interstate Commerce Act. There were three vital omissions required by law to safeguard the public's rights, namely, a written proposal signed by the proponent, public notice, and opportunity for shippers and other interested parties to appear before the Committee in a public hearing. None of these requirements were met.

The agreements approved by the Interstate Commerce Commission for the Illinois Territory Railroads, Eastern Railroads, and the Interterritorial Agreement read in part as follows:



[fol. 161]

## - Agreement of Illinois Territory Railroads

### Article III. *Procedure.*

Section 2. *Proposals.* Freight traffic matters to be considered initially by any Committee, unless otherwise acceptable in any instance to its members, *shall be presented to it by a member thereof, or, any other interested party, by a written proposal signed by the proponent.* (quoted in part—italics ours).

Section 3. *Public Notice of Proposals.* The Chairman of the Committee to which a proposal is properly presented *will give prompt public notice of the proposal by publication of a synopsis thereof in a recognized traffic journal of national circulation* stating that interested shippers and other interested parties, within 14 days after such publication, *may communicate their views regarding it to the Chairman.* (quoted in part—italics ours.)

Section 8. *Hearings.* Shippers and other interested in any proposal, upon request to the Chairman of the Committee before which it is pending, *will be accorded opportunity to appear before the Committee to present facts and other considerations material and relevant to the proposal.* (quoted in part—italics ours).

## Agreement of Eastern Railroads

### Article III. *Procedure.*

Section 2. *Proposals.* Traffic matters to be considered initially by any organization, unless otherwise determined by its members, *shall be presented to it by a member thereof, or any other interested party, by a written proposal signed by the proponent.* (quoted in part—italics ours).

Section 3. *Public Notice of Proposals.* The Chairman of an organization to which a proposal is properly presented *will give prompt public notice of the proposal by publication of a synopsis thereof in the Traffic*

*World or other recognized traffic publication, stating that interested shippers and other interested parties, within 14 days after such publication, may communicate their views regarding it to the Chairman. (quoted in part—italics ours).*

Section 8. *Hearings. Shippers and other interested in any proposal, upon request to the Chairman of the Committee before which it is pending, will be accorded reasonable opportunity to appear before the Committee to present facts and other considerations material and relevant to the proposal. (quoted in part—italics ours).*

[fol. 162]                      Interterritorial Agreement

Article II.

Section 1(b). Any interterritorial traffic matter *may be presented or proposed to the appropriate organization in any territory by any carrier or interested person in the same manner as other matters are presented thereto under the territorial agreement applicable therein. (italics ours).*

Section 1(c). The Chairman of the territorial organization to which an interterritorial traffic matter is presented *will give public notice of the same in accordance with the procedures of his territorial agreement and, in addition, give notice thereof to the chairman of the appropriate organization in each other territory that may be involved or affected.*

Section 5(a). *Shippers and others interested in any proposal of an interterritorial traffic matter may orally present facts and considerations pertinent thereto to any territorial organization considering the proposal, subject to the provisions of the territorial agreement under which such territorial organization functions.*

Therefore, the traffic matters contained in supplement 126 to N.Y.C. tariff 701-A scheduled to become effective July 30, 1957 were:

1. Without a written proposal that shippers or other interested parties could examine,
2. Without public notice of any description,
3. Without opportunity for shippers or other interested parties to request and participate in a public hearing.

This is an outright denial of the shipping public's rights to be heard prior to tariff publication of joint rates—and to which they should now be heard in full. Request is hereby made for suspension of supplement 126 to New York Central tariff 701-A, I.C.C. No. 1169, under an investigation and suspension proceeding with public hearing assigned at Chicago, Illinois, in order that the rights for all parties are properly protected.

[fol. 163]

#### IV

#### Unfair and Destructive Competitive Practices

The National Transportation Policy states in part, "It is hereby declared to be the National Transportation Policy of the Congress . . . To encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantage, or *unfair or destructive competitive practices*; . . ."

The proposed rates in Supplement 126 to N.Y.C. Tariff 701-A violates this policy. The establishment of a 5½¢ (X-206) rate from Moronts, Illinois to Kankakee, Illinois for 83½ miles requires close examination. The New York Central maintains that 5½¢ is necessary to meet barge competition which they claim *exists in equal effect throughout the 83½ miles*. This is not true. A cursory examination of the competitive situation in Illinois along the line of the New York Central shows that the establishment of a 5½¢ rate amounts to "an unfair and destructive competitive practice". Because of the difficulty in obtaining this evidence, we are not able at this moment to show the complete competitive situation. We respectfully request a public hearing where the Chicago Board of Trade will undertake to show in a comprehensive manner the competitive situation along the New York Central and the adjacent territory. A

competitive railroad like the Gulf, Mobile & Ohio Railroad, for example, which serves Dwight, Illinois, has one thing to consider when it desires to meet barge competition at a competitive level, *which is altogether different* than will arise under the tariffs here protested if the New York Central Railroad is permitted to publish this ridiculously low level of rate into Kankakee. Existing barge competition [fol. 164] might dictate a reduction of four or five cents per 100 pounds by the G.M. & O. to meet barge competition, but the proposed 5½¢ N.Y.C. rate would require an impossible 13¢ or 14¢ reduction. The New York Central, by establishing a 5½¢ rate from Moronts and intermediate points to Kankakee is erecting an exclusive "conveyor belt" over which grain would move to the exclusion of every railroad operating in the territory and to the barge lines who seek their fair place in the transportation picture. The admonitions in the Transportation Policy enacted by the Congress of the United States prohibits this type of competition made on the thin allegation that that level is necessary to attract the business. New York Central here publishes a level of rate far lower than necessary to fairly compete with other modes of transportation ignoring completely the economic status of other railroads operating in the territory, and the shipping public dependent upon them. Furthermore, they add insult to injury by catering to a select class of shippers by limiting the use of the ridiculously low rate to a particular type of traffic, namely, Products of Corn.

Cases before the Commission and the Courts in this regard show:

*Competition and rate making:* "The Commission has the power and jurisdiction to restrain rail rate reductions when necessary to enforce compliance with the national transportation policy."—*Atlanta & St. A.B. Ry. Co. v. United States*, 104 F. Supp. 193 (198)\*.

"The commission is charged with the specific duty to preserve the inherent advantages of each mode of transportation subject to provisions of the act, and to prevent and eliminate unfair and destructive competition not only within each form, but also between and among the different forms of carriage.—" *Sugar Cases of 1951*, 284 I.C.C. 333 (351) [Citing 321 U.S.



194]; Southwestern Tank-Truck Carriers Committee v. Abilene & S. Ry., 284 I.C.C. 75 (82, 85).

[fol. 165] "Establishment of proposed rate, *which is lower than the over-all cost of water movement*, would be lower than necessary to meet water competition, and would constitute an unfair competitive practice."—Aluminum, Point Comfort, Tex., to East Davenport, Iowa, 283 I.C.C. 85 (91).

"Being lower than necessary to meet tank-truck competition, proposed rail rates would result in an undue burden upon respondents' (rail carriers) other traffic. The problem is to arrive at an adjustment *which will square the national transportation policy and other provisions of the act*, and be fair to both form of transportation."—Petroleum Products in Illinois Territory, 280 I.C.C. 681 (691).

Again we reiterate that showing the competitive situation on grain from as many origins as are involved in Illinois is not susceptible to a quick or convenient acquisition. It is a sizeable undertaking to gather thus factual data together, not possible in time for this writing, but if a reasonable time is allowed for a public hearing this protestant will undertake a comprehensive competitive presentation for the Commission's examination.

## V

### Types of Discrimination Arising Under Proposed Rates

A. The proposed schedule of rates prevent the movement of grain products via Chicago, Ill., on the same basis with Kankakee, Ill., contrary to the equality that has existed over many years. Page 3 of Appendix "A" is a statement of rates from origins on the Kankakee Belt Line of the N.Y.C., showing the present rates to Chicago and Kankakee. Rates under the column headed "Other" prefixed with "(1)" are the New York Central rates to Chicago applying on corn and "only on traffic destined beyond Chicago by rail." In the last column are the corn rates to Kankakee, Ill. It will be noted that all stations Moronts through Budd, Ill., have the same gathering rate to both

reshipping or proportional rate points, therefore the combination over Chicago and Kankakee are exactly the same from every one of these stations to destinations in the Central Territory. Likewise, if corn is processed at Kankakee or at Chicago, the total through charges are the same. *But* under the rates here protested, combinations will be built over Kankakee, Ill. on a basis of  $51\frac{1}{2}\text{¢}$  (X-206) to Kankakee whereas over Chicago the same high level of rates will continue. Therefore a corn processor at Kankakee will have an  $18\frac{1}{2}\text{¢}$  advantage over the corn processor at Chicago. The proportional rate from Kankakee to Central Territory destinations will not route via Chicago in connection with the New York Central from Kankakee to Chicago. Here, the New York Central unlawfully seeks to tie up all traffic to their long haul beyond a rate-break point in violation of Commission prescribed rate-break principles, and unjustly discriminate against Chicago who has had complete equality for decades.

B. Supplement 126 to New York Central Tariff 701-A seeks to establish rates into the Central Freight Association territory on Corn Products on the basis of a  $51\frac{1}{2}\text{¢}$  (X-206) rate from origins on the Kankakee Belt Line to Kankakee, Illinois, to which will be added the proportional rates in Agent H. R. Hinsch's Tariff 535-C, I.C.C. 4499. This prevents the application of the reduced level of rates from applying on Whole Corn, resulting in unjust discrimination against that particular type of traffic condemned by section 3 of the Interstate Commerce Act. For example, from Dwight, Illinois to Akron, Ohio, the proposed tariff schedule would publish a *Corn Products* rate of  $43\text{¢}$  made up of a  $51\frac{1}{2}\text{¢}$  from Dwight to Kankakee, Ill., to which would be added the proportional rate from Kankakee to Akron of  $37\frac{1}{2}\text{¢}$ . On *Whole Corn*, however, there would exist from Dwight to Akron a  $57\text{¢}$  rate [fol. 167] made up of  $19\frac{1}{2}\text{¢}$  from Dwight to Kankakee plus the proportional rate of  $37\frac{1}{2}\text{¢}$  from Kankakee to Akron, Ohio. Therefore, Whole Corn, in its natural state, would take a basis  $14\text{¢}$  higher than Corn in a manufactured or processed state, which is unjust discrimination under section 3 and unreasonable under section 1 of the

Interstate Commerce Act. The penalties against Whole Corn range as high as  $19\frac{1}{2}\text{¢}$  per 100 pounds from other origins on the Kankakee Belt Line too numerous to show here in view of the time limit placed upon this protestant under the rules of procedure before the Interstate Commerce Commission. However, at the public hearing, a complete showing will be made as to the gross inequities that arise under the proposed rate schedules to numerous destinations in the C.F.A. Territory. We are of the sincere opinion that the Interstate Commerce Commission would not permit the contemplated rates to go into effect if they were fully informed in this matter.

C. Another discrimination that arises under the proposed tariff schedule is that transit operators along the route of movement are not kept in equal position contemplated under the long established theory of transit. The Interstate Commerce Commission recognized years ago that when transit is granted there shall not be unjust discrimination among those receiving the privilege. Processors located at different points along the route of movement will be affected in varying degrees by the long established "minimum rate rule" under transit and the "3-way rule," which has likewise been approved by the Commission. For example, a transit operator at Columbus, Ohio might have a carload of Corn move from Dwight, Illinois into his transit station on the basis of a  $19\frac{1}{2}\text{¢}$  rate from Dwight [fol. 168] to Kankakee, to which would be added the  $37\frac{1}{2}\text{¢}$  proportional rate from Kankakee to Columbus for a total of  $57\text{¢}$ . While this Corn is in his possession, he processes it into Corn Products and forwards it to Akron, Ohio, the transit destination. Under the proposed rate schedule, the Corn Products rate from Dwight, Ill., to Akron, Ohio would be  $43\text{¢}$ , made up of  $5\frac{1}{2}\text{¢}$  from Dwight to Kankakee, plus  $37\frac{1}{2}\text{¢}$  from Kankakee, to Akron, Ohio. The transit tariff at Columbus, Ohio carries a "three-way rule" which provides that the highest rate in the movement must be protected, namely, the rate from origin to the transit station, origin to transit destination, or transit station to transit destination, whichever is highest. Under the example given, the minimum rate in the movement would be  $57\text{¢}$  on corn from origin to transit station, resulting in a  $14\text{¢}$  penalty. Now we would like to contrast that with

a processor at Valparaiso, Indiana, where the proportional rate from Kankakee is 20¢ per 100 pounds. This transit operator would have a corn rate of 39½¢ from Dwight to Valparaiso made up of 19½¢ rate to Kankakee, plus a proportional rate from Kankakee to Valparaiso of 20¢. After the transit operator at Valparaiso had processed the Whole Corn into Corn Products and decided to sell it at Akron, Ohio, he would be entitled to move on to destination at a through 43¢ rate from which he would deduct 39½¢ from origin into his transit station and move on a transit balance from Valparaiso to Akron of 3½¢ per 100 pounds. The Valparaiso transit operator's minimum rate under the 3-way rule would be that of 43¢ on the Corn Products from Dwight to Akron without any penalty over and above the through rate. Under these two examples, we can see that the transit operator at Columbus, Ohio has been burdened with a prohibitive 14¢ per 100 pound penalty arising under [fol. 169] transit, whereas the man at Valparaiso moves on the through rate from origin to transit destination without incurring any such penalty. This too is in violation of section 3 unjustly discriminating against the Ohio processor and unduly preferring the Indiana processor. Likewise, the establishment of any system of rates that results in such absurd consequences is unreasonable in violation of section 1 of the Act.

D. In addition to the discriminations arising under the "3-way rule" just cited, there is also a discriminatory feature that arises under the "minimum rate rule" which reads, in substance, that the through rate to be protected on a shipment shall be the through rate from point of origin to final destination on the commodity received into the transit point or that shipped from the transit point whichever is higher. In other words, the through rate from origin to final destination shall in no case be less than on Whole Corn or Corn Products, *whichever is higher*. Under the example cited above, the transit operator at Columbus, Ohio already has to pay a 57¢ rate under the 3-way rule, and the minimum rate rule requires the protection of the Whole Corn rate from origin to final destination which in this case happens to also be 57¢. Now let



us consider the transit operator at Valparaiso, Indiana and see the different situation he will be in under this "minimum rate provision". He would be obliged to protect the Corn rate from Dwight, Illinois to Akron, Ohio of 57¢ made up of  $19\frac{1}{2}$ ¢ from Dwight to Kankakee, plus the proportional rate of  $37\frac{1}{2}$ ¢ from Kankakee to Akron, Ohio. He would not be entitled to use the reduced Corn Product rate from origin to final destination because of these "minimum rate provisions", therefore, since his through corn rate would be 57¢ and he has paid into his [fol. 170] transit station  $39\frac{1}{2}$ ¢, his transit balance from Valparaiso to Akron, would be  $17\frac{1}{2}$ ¢ per 100 pounds, or 14¢ per 100 pounds higher than a mere observance of the "3-way rule." *These rules vary from point to point raising a myriad of difficult rate situations.* It taxes the imagination to think of a proposed schedule of rates that would result in penalties of this kind and find them within the meaning of "to encourage the establishment and maintenance of reasonable charges" in the National Transportation Policy.

We have cited but two examples of the inequities that would arise under the proposed rate schedules, and time will not permit a further showing under the circumstances. At the public hearing, should one be granted, we will introduce evidence showing this situation in detail in order that the Interstate Commerce Commission can be fully advised as to the complete lack of consideration that has been given by the proponent carrier in publishing a system of rates with these absurd results.

## VI

### Fourth Section Departure Territory

The scope of the origin territory involved in the fourth section application connected with rates into the Central Freight Association territory is very large and not susceptible to a full showing at this writing. Maps portraying the fourth section territory involved in its entirety will be undertaken by the Chicago Board of Trade and presented at the hearing so the Commission can be fully informed of the extent to which the low level of rates published in Supplement 126 to N.Y.C. Tariff 701-A will be operative. We believe we are entitled to a reasonable length of time to

prepare a complete presentation of the matters involved [fol. 171] in the publication of these rates and that the Interstate Commerce Commission should be in possession of all the facts before the rates are permitted to become effective. A fourth section territory that embraces several states is of such a dimension that requires close scrutiny on the part of all interested parties as well as the Commission. There is presently assigned for hearing in Kansas City an extensive hearing to last at least one week under the Southern Governors Complaint, Docket 31874, in which the rates on grain and grain products and related articles throughout the entire country are involved and this protestant is obliged to participate actively in that hearing and, therefore, is unable to devote full time and attention to this New York Central rate situation. We therefore pray that the Commission will see fit to enter upon an investigation and suspension of this tariff schedule to permit all interested parties to accumulate all of the facts necessary to fully appraise the Commission of the unlawful situations that would result therefrom.

## VII

### Unlawful Control of CFA Rates by New York Central

We show on pages 4 to 6 in the appendix attached hereto, excerpts from CTR Tariff 535-C for the Commission's examination. Page 4 is the title page of this tariff stating that it contains proportional rates applying on grain and grain products. Particular emphasis should be placed upon the words "proportional rates" due to the fact that this tariff publishes only proportional rates from the stations shown thereon to points in the Central Freight Association Territory. These proportional rates apply on grain, grain products and related articles as published in CTR Tariff 600-Series without restriction. They apply freely on corn, [fol. 172] corn products as well as all other grain and grain products. The New York Central in issuing Supplement 126 to their Tariff 701-A as an originating western carrier, publishes a 5½¢ (X-206) rate from origins on their Kankakee Belt Line to Kankakee with definite restrictions at-

tached thereto, namely, "when milled in transit". Therefore, between an origin on their railroad to any transit destination in the Central Freight Association Territory *whole corn must be milled in transit in order to obtain their low 51½¢ rate.* In this manner, they are restricting CTR Tariff 535 which has long been free from restriction thereby exercising unlawful control over the Central Freight Association proportional rates. In other words, the New York Central as an origin line, has placed a restriction in *their own individual lines tariff which operates to restrict all of the proportional rates* in the agency tariff published by H. R. Hinsch contrary to the tariff rules promulgated by the Interstate Commerce Commission.

The tariff rule in issue is Rule 4(h) tariff circular 20. The pertinent portions of rule 4(h) is as follows:

*"When rules or regulations are thus separately published, rate tariffs may be made subject thereto only by specific I.C.C. reference in the rate tariff. This reference should be made in substantially the following form: Governed, except as otherwise provided herein, by rules and regulations shown in — I.C.C. No. —, supplements thereto or successive issues thereof."*

With respect to 4(h), *In Mason By-Products Co. v. Director General*, 92 ICC 646 at 648 the Commission sets forth the purpose of rule 4(h) of the Circular. While the Tariff Circular 18-A rule is referred to, no substantial change is made in tariff circular 20. In this case the Commission stated:

[fol. 173] "In rule 4(h) of our Tariff Circular 18-A containing rules governing the construction and filing of tariffs, it is provided that *all rules and regulations which in any way affect the rates shall be stated in the same tariff with the rates*, or if contained in another tariff shall be made a part of the rate tariff by specific reference "Governed by rules and regulations shown in — I. C. C. No. —." Rules to the same effect have been in force since January, 1907. The reason for such requirement is obvious. *Any practice which would permit of rates being changed by the use of rules not re-*

*ferred to in connection with the rates themselves must of necessity tend to create the very discrimination, prejudice, and preference which the interstate commerce act was designed to prohibit and make unlawful."*

In *E. L. Foote et al. v. Cedar Rapids & Iowa City Railway et al.* 256 ICC 263 at 267 and 268 where the following appears:

*"Rule 4(h) of Tariff Circular 20 provides that, where it is not desirable or practicable to include the governing rules and regulations in the rate tariff, they may be separately published, but that the rate tariff may be made subject to such separately published rules only by specific reference to them."*

An examination of pages 5 and 6 show that at no place in CTR Tariff 535 is there a "when milled in transit" restriction placed upon the application of those proportional rates *and there never has been.* This N.Y.C. provision constitutes an unreasonable rule or restriction in violation of section 1 of the Interstate Commerce Act. It should be remembered that transit operators within the Central Freight Association Territory drawing grain from origins in Illinois that are made on combinations over gateways such as Kankakee, Illinois or Chicago, Illinois do not look behind the proportional rate tariff under which they operated *for extraneous restrictions.* If there are any restrictions that are to be placed on the tariffs that they use, such restrictions should be contained within the proportional rate tariff. We can well imagine the dilemma of a transit operator at Columbus, Ohio who after forwarding a carload of whole corn to Akron, Ohio finds *that the original carrier operating from the country origin in Illinois to the re-shipping point, has placed a restriction or limitation upon his use of the proportional rate tariff* which has been free and unhampered throughout many years.

While the foregoing points out the unlawful control by the New York Central as an individual carrier, is exercising over the proportional rates in the Central Freight Association Territory we wish to specifically state at this point that we do not condone the ultimate inclusion of such restric-



tion in the Central Freight Association Tariff. Grain, grain products and related articles *should continue to move in the same free and unrestricted manner as it has for many years* and any attempt to place restrictions thereon is strongly opposed by this petitioner.

## VIII

### Importance of an Investigation

Much has heretofore been said relative to "unfair and destructive competitive practices" in violation of the National Transportation Policy that would arise under the proposed rate schedules to become effective July 30, 1957. Injured parties located throughout the state of Illinois in personal possession of facts relating to the competitive situation will attend the public hearing, if granted, to inform the Commission of the evils arising out of an unlawfully low level of rates contemplated in supplement 126 to N.Y.C. tariff 701-A in violation of Section 1, and the unjust discrimination and undue preferences resulting therefrom in violation of section 3 of the Interstate Commerce Act. This [fol. 175] factual information is within the personal knowledge of producers, elevator operators and grain merchants located on other railroads in the territory adjacent to the New York Central's Kankakee Belt Line who have substantial investments in grain facilities which will be rendered useless for the forwarding of rail shipments due to the cross-country competition that will arise from this cut-throat type of rate construction. These interested parties should have the opportunity to appear before the Interstate Commerce Commission and express their views in this matter so vital to their continued existence in the grain business. They cannot all be reached in time to express their views in writing, and would not be able to fully express themselves in writing regarding all facets of their problem. To give these rural agriculturalists a fair opportunity to air their grievances, the Commission should suspend supplement 126 to N.Y.C. tariff 701-A and enter upon an Investigation and Suspension proceeding assigning the matter for public hearing in Chicago, Illinois, a point convenient to them.

## IX

## Conclusions

In our opinion, rail carriers should have the opportunity of meeting their competition at a fair level of rates that are not "unfair and destructive competitive practices" in violation of the National Transportation Policy; nor should they be so low as to cast the burden of their existence on other forms of traffic in violation of section 1; and they should not be prejudicial or discriminatory favoring some markets or gateways over others, or select shippers over others; and last but not least, favor some commodities over others, all in violation of section 3 of the Interstate Commerce Act. [fol. 176] In meeting the competition the rates should be reasonable compensatory for the service rendered, consistent with the public interest, such as will foster sound conditions in transportation, and among the several carriers, without unjust discrimination, undue preference or advantage, or unfair or destructive competitive practices. The rates involved herein are contra to every admonition enumerated in the Interstate Commerce Act and the New York Central Railroad Company should be called upon in an Investigation and Suspension proceedings to justify each and every violation thereof.

[fol. 177]

## Prayer

Wherefore, the petitioner prays that the tariff schedule herein protested be suspended, the effective date thereof postponed, and its application be deferred pending an investigation into and concerning the lawfulness thereof. In addition, that a hearing be assigned on this matter at Chicago, Illinois for the convenience of the parties affected thereby.

Respectfully submitted,

Board of Trade of the City of Chicago, R. D. Erickson, Assistant Manager, Transportation Department; J. S. Chartrand, of Counsel, Transportation Department, 141 West Jackson Boulevard, Chicago 4, Illinois.

Dated at: Chicago, Illinois, July 16, 1957.

Certificate of Service (Omitted in printing).

{fol. 180]

## APPENDIX "A"

TO

PETITION OF SUSPENSION

FILED BY

BOARD OF TRADE OF THE CITY OF CHICAGO


TO

NEW YORK CENTRAL TARIFF 701-A,

I.C.C. No. 1169

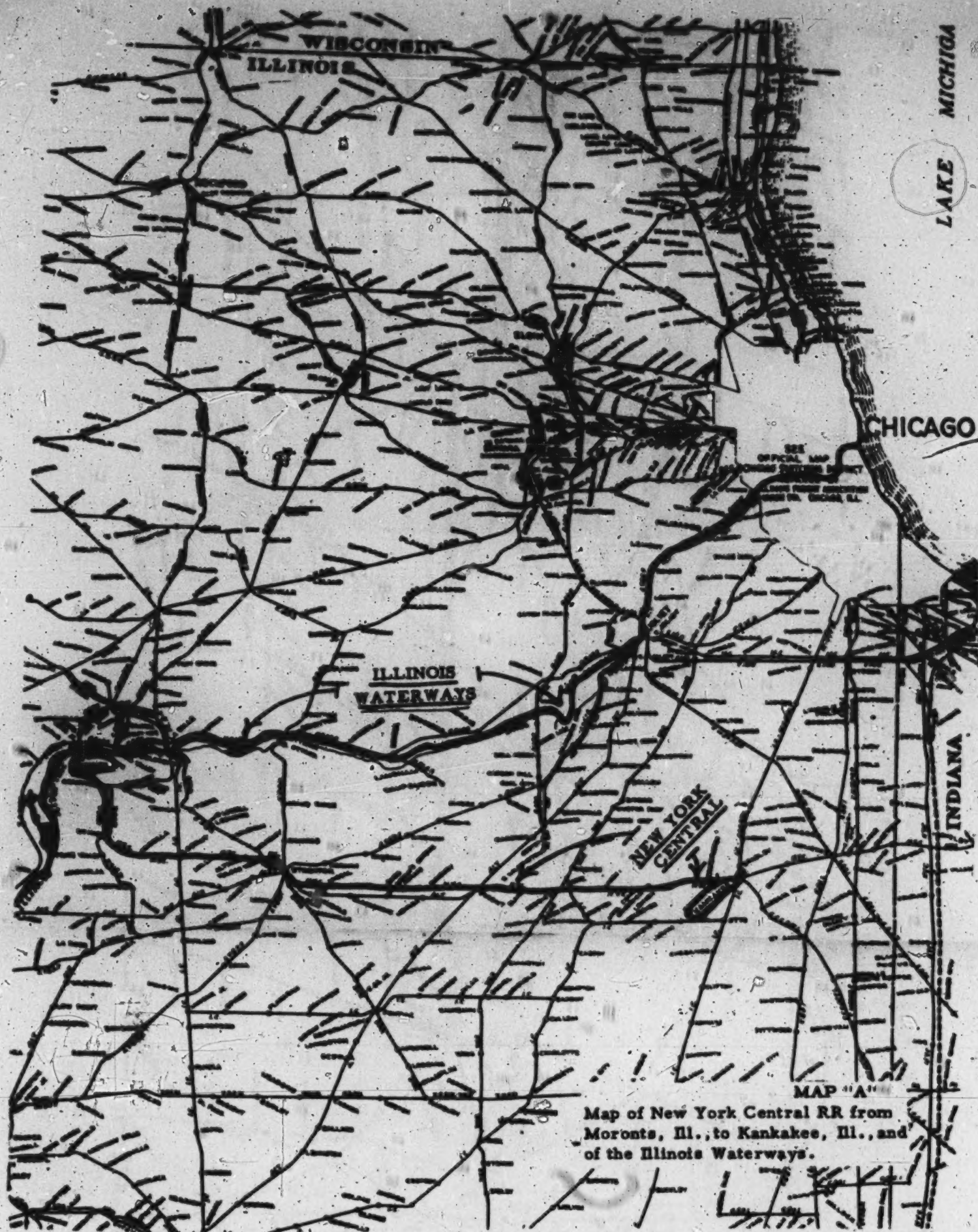
## MAP "A"

Map of New York Central RR from Moronts, Ill., to  
Kankakee, Ill., and of the Illinois Waterways.

(See opposite) 







Map of New York Central RR from Moronts, Ill., to Kankakee, Ill., and of the Illinois Waterways.

[fol. 181]



Subject (except as otherwise provided by "T") to TARIFF OF INCREASED RATES AND CHARGES X-175-C, Agent R.R. Ninsch's ICC 4679, CTC 2273, 111CC 642, PSC-NY 541, Ohio 2534, PaPUC 919, supplements thereto or successive issues thereof and subject to increase in Rates and Charges, as provided in Item X-188 Series, page 2 of Supplement 122 and subject to increase in Rates and Charges, as provided in Item X-204, page 2 of Supplement 122.

SUPPLEMENT TO		
CTC 386	MPSC 224	ICC 1169
111CC 172	PSC-NY 541	PaPUC 304
IndRC 213	Ohio 346	PSC-WVa 135



# THE NEW YORK CENTRAL RAILROAD COMPANY

IN CONNECTION WITH  
PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF, AS AMENDED

## SUPPLEMENT 126

TO

## FREIGHT TARIFF 701-A

Supplements 20, 91, 122, 125, 126 and the following Special Supplement contain all changes.  
Supplement 20 (Ex Parte 175) (Rebulet 229).

Local, Joint and Proportional Freight Tariff  
NAMING RATES IN CENTS PER 100 POUNDS (EXCEPT AS NOTED)

ON

GRAIN AND GRAIN PRODUCTS

AND OTHER ARTICLES AS DESCRIBED ON PAGES 5 AND 6 OF TARIFF

ALSO

Feed or Feed Ingredients, Animal or Poultry  
AS DESCRIBED IN RULE 2, PAGE 25 OF TARIFF, AS AMENDED  
IN CARLOADS (Except as Noted)

FROM STATIONS ON	TO STATIONS IN		
NEW YORK CENTRAL RAILROAD (Stations in United States, Buffalo, N.Y., Clearfield, Pa., and West) And other Initial Carriers shown on page 3 of tariff.	ILLINOIS INDIANA IOWA KENTUCKY	MICHIGAN MISSOURI NEW YORK	OHIO PENNSYLVANIA WEST VIRGINIA WISCONSIN

ALSO MILEAGE RATES, SEE PAGES 551 AND 599 OF TARIFF

Governed, except as otherwise provided herein, by Official and Illinois Classification (CFC) and by  
Exceptions in Agent R.R. Ninsch's Tariff 120 Series, Agent C.W. Boyn's Tariff 90 Series and Agent R.R. Ninsch's  
Tariff 80 Series (see Rule 125 of tariff, as amended).

This supplement contains Rates and Routes, subject to Reference Mark (T) that contravene the long-and-  
short-haul provisions of the amended Fourth Section of the Interstate Commerce Act, Relief as to such departure  
is sought under Agent O.E. Schultz's Fourth Section Application 2386 of June 28, 1957.

ISSUED JUNE 28, 1957

EFFECTIVE JULY 30, 1957

Issued by  
R.T. WHITE,  
Manager Tariff Bureau,  
400 Lexington Avenue,  
NEW YORK 17, N. Y.



EXPLANATION OF NOTES

Note 45 Cancels Note 45 pages 2 and 3 of Supplement 37. — Concluded:

B-3. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products (except on commodities bearing reference mark (a)), originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), Northwest Territory (see Note 40, page 84 of tariff, as amended), except as otherwise provided in paragraph B-5 below or on shipments subject to rates governed by the provisions of Note 50, page 88 of tariff; except that on shipments originating at stations shown in tariffs named in Note A, below, from which proportional rates are published to Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, and when the grain products are destined to the following points, rates on grain products subject to this Note, will only apply when the proportional rates published in tariffs named in Note A below, are assessed on the inbound shipments to Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended,

Bellaire.....	Ohio	Crabtree.....	Pa.	Irvinston.....	Pa.	Oil City.....	Pa.
Belle Vernon.....	Pa.	Dunkirk.....	N. Y.	Jacobs Creek.....	Pa.	Parkersburg.....	W. Va.
Benners.....	Pa.	East Buffalo.....	N. Y.	Johnstown.....	Pa.	Pittsburgh.....	Pa.
Black Rock.....	N. Y.	Elizabeth.....	Pa.	Leckrose.....	Pa.	Point Pleasant.....	W. Va.
Blairville.....	Pa.	Ellwood City.....	Pa.	Macontown.....	Pa.	Ravenwood.....	W. Va.
Bridgeport.....	Ohio	Erie.....	Pa.	Maxwell.....	Pa.	Salamanca.....	N. Y.
Brownsville.....	Pa.	Fairchance.....	Pa.	Monongahela.....	Pa.	Suspension Bridge N. Y.	
Buffalo.....	N. Y.	Gauley Bridge.....	W. Va.	Moundsville.....	W. Va.	Titusville.....	Pa.
Charleston.....	W. Va.	Grafton.....	W. Va.	New Martinsville.....	W. Va.	Washington.....	Pa.
Connellsville.....	Pa.	Huntington.....	W. Va.	Niagara Falls.....	N. Y.	West Newton.....	Pa.
Corry.....	Pa.	Indiana.....	Pa.	North Tonawanda.....	N. Y.	Wheeling.....	W. Va.

and points named on pages 10 to 99 incl., of tariff, as amended, taking same rates or arbitraries higher.

B-4. Rates on Grain Products bearing reference mark (a) from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), or Northwest Territory (see Note 40, page 84 of tariff, as amended), except as otherwise provided in paragraph B-5 below.

B-5. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments originating at points in Northwest territory and destined to points in the States of Indiana, Michigan and Ohio bearing reference "①" on pages 142 to 147 of tariff, as amended, under heading Northwest (see Note 40, page 84 of tariff, as amended).

B-6. Proportional rate from Kankakee will apply on corn and on the following products in carloads without regard to the existence of single factor joint through rates from Kankakee to stations west of Peoria, Ill., to Peoria, Ill., inclusive and without observing such single factor through rates as minima. Combination rates than proportional or reshipping rates from Kankakee on corn and the following products are not subject to Kankakee local rate as minimum:

Brewers' Flakes (not made from starch).	Feed, animal or poultry, prepared.
Brewers' Meal (not made from starch).	Feed, corn cereal offal (not cereal food preparations and not for human consumption).
Corn Bran.	Feed, flaked corn, toasted or not toasted (not a cereal food preparation and not for human consumption).
Corn Chop.	Gluten Feed.
Corn Dust.	Gluten Feed, sweetened.
Corn Feed (ground, not the product of starch or glucose factories).	Gluten Meal.
Corn Flour.	Grits (not made from starch).
Corn Meal.	Ground Corn.
Corn Malt.	Hominy.
Corn Malt Sprouts.	Hominy Feed.
Corn Oil Cake (ground or unground).	Hulled Corn.
Corn Oil Meal.	Mash, spent grain, dried, without or with not exceeding one per cent. (1%) of Vitamin A added.
Corn Screenings (whole or ground).	
Corn Skimmings.	
Cracked Corn.	

NOTE A.

Issuing Line or Agent	Tariff	IOC	Item, Index or Reference
AT&SF.....	7124-K	14627	Items 315, 320, 325, 330, 335 and 340.
CB&Q.....	G. F. O. 1340-U	20241	Rates provided under column P.
C&IM.....	5-P	B-352	Page 13.
C&NW.....	G. F. D. 17042-D	11209	Rates under column B on pages 34 and 36.
CRI&P.....	34500-D	C-13411	Item 750.
OM&O.....	G. F. O. 3857-C	238	Item 350.
IC.....	1537-M	A-11597	Rates bearing reference 5 encircled on pages 40 to 72 incl.
IIT.....	480-G	A-15	Page 6.
M&SL.....	1500-J	20	Index Numbers 1155 to 1205 incl.
NYC.....	701-A	1169	
NYC&SL.....	G. F. D. 15-W	6117	Index Numbers 1000 to 1185.
PRR.....	73-E	3311	Item 405.
TP&W.....	155-A	312	
Web.....	13308-E	7745	Items 3300, 3325.

For explanation of reference marks, see last page of this supplement

[fol. 188]

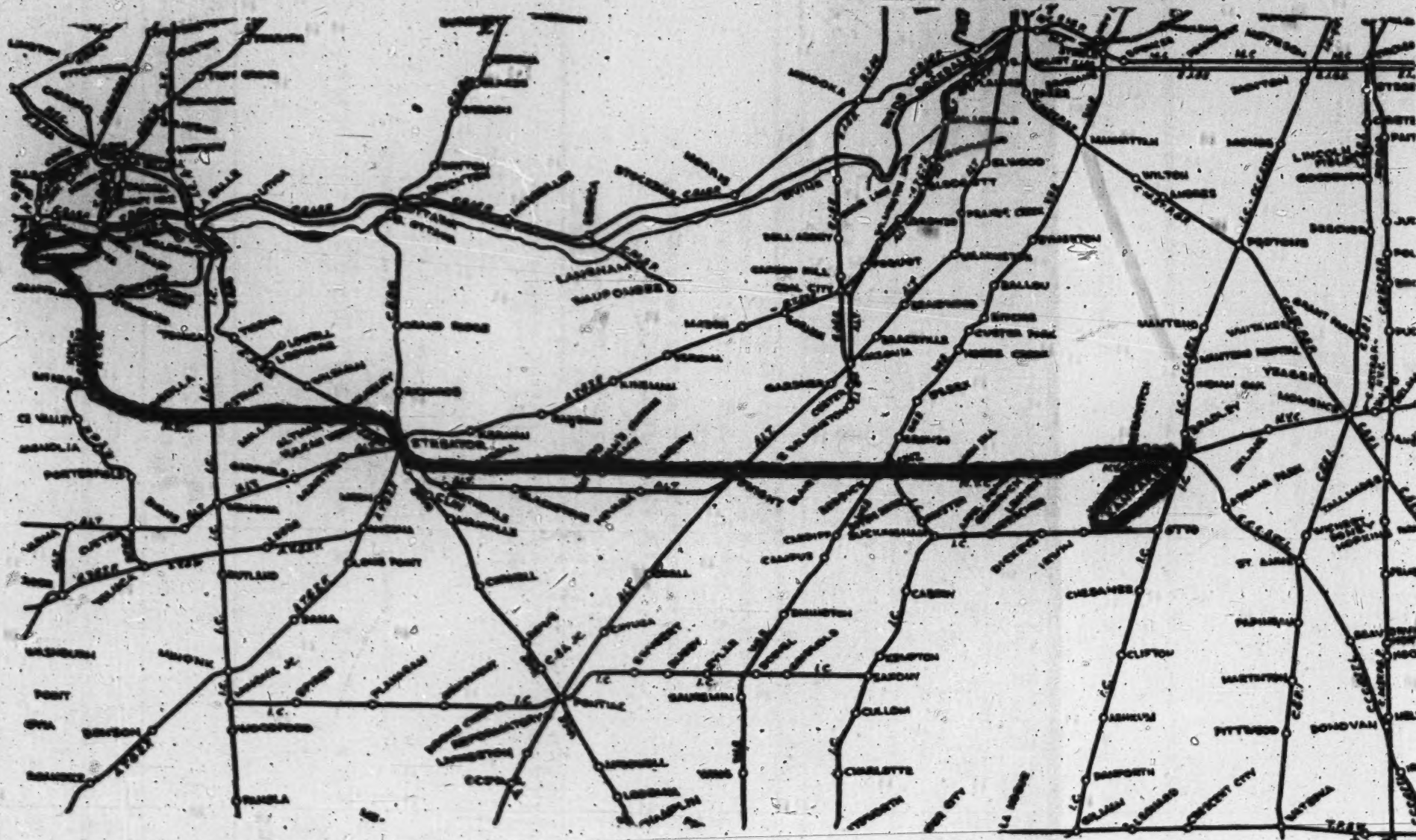


[fol. 182]

MAP "B"

MAP "B"

**Enlarged Map of New York Central from  
Moronts, Ill., to Kankakee, Ill.**





SECTION 3

GRAIN AND GRAIN PRODUCTS: AS PER LISTS REFERRED TO IN RULE 1, PAGE 25 OF TARIFF  
For Station FROM which rates apply, see Section 1 of tariff

FROM Station	Rate	Delivering Line	Route	FROM Station	Rate	Delivering Line	Route	FROM Station	Rate	Delivering Line	Route
TO BATTLE CREEK, MICH.											
Page 70 of tariff. A Change:											
NYC											
8060	11	NYC(N)	1								

SECTION 4

CORN, AS PER GRAIN LIST IN SECTION 1 OF AGENT N.R. NINCH'S FREIGHT TARIFF 800-N, ICC 4044

FROM	TO	RATE	Delivering Line	Route
Page 501 of tariff and 40 of Sup. 122. A Change:				
Blair.....	Ill.			
Bird.....	Ill.			
Dwight.....	Ill.			
Grenville.....	Ill.			
Lehigh.....	Ill.			
Lestert.....	Ill.			
McNabb.....	Ill.			
Milla.....	Ill.			
Mills.....	Ill.			
Moronta.....	Ill.			
Priscilla.....	Ill.			
Raddick.....	Ill.			
Smith Spur.....	Ill.			
Streater.....	Ill.			
Sunbury.....	Ill.			
Union Hill.....	Ill.			
Van's Siding.....	Ill.			
	Kankakee.....	Ill. 5	NYC(N)	1

EXPLANATION OF REFERENCE MARKS

Reference Mark	EXPLANATION
A	Reduction.
B	Change in wording which results in neither increases nor reductions in charges.
C	Not subject to Tariffs of Increased Rates and Charges I-175-C and I-196-A, referred to on title page hereof.
D	Rate applies only on Corn and Corn Products, when milled-in-transit, and only as proportional rate to Kankakee, Ill., on traffic destined to Central Territory, and to the Western Terminal of Eastern Trunk Lines and East thereof, as defined in Central Territory Railroads Tariff S-J, Agent N.R. Ninch's ICC 4582. Minimum weight 100,000 pounds. Rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.
E	Applies only on Oats, Corn (other than bakers', brewers', hominy or groats, also will not apply on Oats, flaked, granulated or refined), in bulk, carloads, minimum weight 100,000 pounds, except when car is loaded to full carrying capacity, actual weight will apply and only when routed via NYC(N) through Schneider, Ind., North Judson, Ind., to South Bend, Ind., thence NYC(N). Also will not apply in connection with the proportional rates named from stations Van's Siding, Ill. (Index 8100), to Moronta, Ill. (Index 8230), inclusive to Kankakee, Ill. on page 501 of tariff, as amended.
F	Will not apply from or to intermediate points, see Title Page. Departure from the terms of the amended Fourth Section of the Interstate Commerce Act, is sought under Agent O. E. Schult's Fourth Section Application 2202 of June 22, 1907.
G	Issued to meet motor truck and water competition.

A-Addition.  
B-Brought forward without change.  
C-Changes prior explanation of this reference mark in tariff, as amended.

(THE END)

For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see above.



**Statement of Rates from Kankakee Belt Line of N.Y.C.  
to Chicago and Kankakee**

NYC ORIGINS (Except as noted)		MILES		RATES TO CHICAGO ON CORN (X-206)					CORN RATES (X-206)	
		To Kankakee	To Chicago	Intra	Inter	IP	Other	To Kankakee, Ill.		
Moronts	NYC	83.5	158.4	-	18	24	(1) 24	24		
	Milw.	-	144.2	17.5	24	24	(39) 19.5			
Granville	NYC	79.3	154.2	-	18	24	(1) 24	24		
	Milw.	-	148.4	17.5	24	24	(39) 19.5			
McNabb		73.4	148.3	23.5	18	24	(1) 24	24		
Priscilla		68.6	143.5	-	17.5	24	(1) 24	24		
Lostant	NYC	64.4	139.3	-	17.5	24	(1) 24	24		
	IC	-	145.0	17	24	24	-			
Villa		60.7	135.6	-	15	24	(1) 24	24		
Streator	NYC	51	125.9	-	13.5	24	(1) 24	24		
	AT&SF	-	90	13.5	24	24	-			
	CB&Q	-	97.6	13.5	24	24	(45) 17.5	-		
	GM&O	-	96.2	13.5	24	24	(45) 17.5	-		
Missal		45.7	120.6	20	13.5	20	(1) 20	20		
Budd		39.3	114.2	20	12	20	(1) 20	20		
Sunbury		34.4	109.3	20	12	20	(1) 20	19.5		
Dwight	NYC	29.2	104.1	20	12	20	(1) 20	19.5		
	GM&O	-	73.7	10.5	20	20	(45) 17.5			
Blair		23.0	97.9	20	12	20	(1) 20	17.5		
Reddick	NYC	20.0	94.9	-	12	20	(1) 20	15		
	Wab.	-	66.0	12	20	20	-			
Union Hill		14.6	89.5	20	12	20	(1) 20	15		
W. Kankakee		2.0	76.9	20	12	17.5	(1) 17.5	-		
Kankakee	IC	-	56.0	12	17.5	17.5	-	-		
	NYC	-	74.9	20	12	17.5	(1) 17.5			

(39) Applies only on corn and only when outbound shipments forwarded to CTR-T.L. and NEFA-Sou. etc. Where this reference appears the rate shown under "IP" column does not apply on corn.

(1) Applies only on corn and only on traffic destined beyond Chicago by rail.

(45) Applies only on corn when destined to territory where no thru one factor rate in effect.

TARIFF AUTHORITY: NYC Tariff 701-A, I.C.C. 1169-NYC Tariff 2801, I.C.C. 1536



**SUPPLEMENT  
TO**

**C. T. C. 2171**  
H. R. Hirsch, Agent  
**Ind. R. C. D-863**  
H. R. Hirsch, Agent

**Mich. P. S. C. 771**  
H. R. Hirsch, Agent

**I. C. C. 4499**  
H. R. Hirsch, Agent  
**I. C. C. A-3941**  
W. J. Procter, Agent

**CENTRAL TERRITORY RAILROADS  
TARIFF BUREAU**  
(H. R. Hirsch, Agent)

**SUPPLEMENT 38  
TO**

**FREIGHT TARIFF 535-C**  
Cancels Supplement 37

Supplements 3, 26, 36 and 38 contain all changes.

**PROPORTIONAL RATES  
APPLYING ON  
GRAIN AND GRAIN PRODUCTS  
CARLOADS**

FROM			TO Stations in
CAIRO, ILL.	EAST ST. LOUIS,	MANITOWOC, WIS.	INDIANA OHIO KENTUCKY-PENNSYLVANIA MICHIGAN WEST VIRGINIA NEW YORK  named on pages 10 to 69 incl., of tariff, as amended
CHICAGO, ILL.	ILL.	MEMORINER,	
EAST JOLIET, ILL.	GALE, ILL.	MICH.	
EAST FT.	KANKAKEE, ILL.	MICHIGAN CITY,	
MADISON, ILL.	KENSAUNEE, WIS.	IND.	
EAST HANNAH,	MACKINAW CITY,	MILWAUKEE, WIS.	
ILL.	MICH.	PEORIA, ILL.	
EAST KROKUK,	MANISTIQUE,	QUINCY, ILL.	
ILL.	MICH.	ST. LOUIS, MO.	
			THEBES, ILL.
and other points named on pages 6 to 9 incl., of tariff, as amended			

Governed, except as otherwise provided herein, by Official Classification 65, I. C. C.-O. C. 65, Mich. P. S. C.-O. C. 65, W. S. Flint, Agent; by exceptions thereto, Tariff 130-C, I. C. C. 3926, Mich. P. S. C. 675, issued by H. R. Hirsch, Agent, and by supplements thereto or successive issues of said publications.

**ISSUED NOVEMBER 7, 1956**

**EFFECTIVE DECEMBER 15, 1956**

W. J. PRUTTER, Agent,  
616 W. Jackson Blvd.,  
Chicago 6, Ill.

Issued by  
H. R. HIRSCH, Agent,  
22 West Madison Street,  
Chicago 2, Ill.



EXPLANATION OF NOTES

Note 45 Cancels Note 45 pages 2 and 3 of Supplement 27.

APPLICATION OF RESHIPING OR PROPORTIONAL RATES APPLICABLE ON  
TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS  
DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshiping or proportional rates applicable on traffic reaching the reshiping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshiping point, and will only apply on such traffic when originating at points in the territory as described below, from which no single factor through commodity rates are in effect in connection with inbound carrier via the reshiping point from original shipping point to final destination; provided that in no case shall the combination through rate to and from the reshiping point be less than the local rate from the reshiping point to final destination nor less than the through joint rate in effect on the commodity forwarded from the reshiping point from origin point of the grain to final destination of the grain or grain products via any route, whichever may be the higher. The difference necessary to protect either of the above cases of rates as minimum to be added to the reshiping or proportional rate from the reshiping point. (See Supplement 27.)

On shipments which arrive by River or Canal at Chicago, Pekin or Peoria, Ill. These rates are applicable as of the date shipments leave the point of origin as shown on the shipping directions surrendered at Chicago, Pekin or Peoria, Ill.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshiping points subject to this application.

Exception.—The foregoing provisions as to the application of local rates or the rate from the origin point to final destination as minima will not apply on shipments arriving at Chicago, Pekin or Peoria, Ill., by River or Canal, and on shipments of corn or corn products as enumerated in B-6 arriving at Kankakee, Ill.; by NYC from NYC Stations West Kankakee, Ill., to Moronta, Ill. (Station Numbers 8090 to 8220).

A-1. Rates on Grain from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewanee, Wis., Manitowish, Mich., Manitowish, Wis., Menominee, Mich., and Milwaukee, Wis., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

A-2. Rates on Grain Products from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewanee, Wis., Manitowish, Mich., Manitowish, Wis., Menominee, Mich., Milwaukee, Wis., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products originating beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

B-1. Rates on Grain from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, (except as provided in paragraph B-2 hereof), subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic originating in Trans-Mississippi or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

B-2. Rates on Grain from Peoria, Ill., subject to the provisions of this Note will apply from Peoria, Bloomington, Crescent, Pekin, South Bartonville and Springfield, Ill., only as follows:

(a) As proportional or reshiping rates on shipments originating at stations shown in tariffs named in Note A page 87 of tariff, as amended, from which proportional rates are published to Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and only when such proportional rates are assessed into Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and when the grain is destined to the following points:

Bellaire.....	Ohio	Crabtree.....	Pa.	Irvinston.....	Pa.	Oil City.....	Pa.
Belle Vernon.....	Pa.	Dunkirk.....	N. Y.	Jacobs Creek.....	Pa.	Parkersburg.....	W. Va.
Bessemer.....	Pa.	East Buffalo.....	N. Y.	Johnstown.....	Pa.	Pittsburgh.....	Pa.
Black Rock.....	N. Y.	Elizabeth.....	Pa.	Leckrone.....	Pa.	Point Pleasant.....	W. Va.
Blairsville.....	Pa.	Ellwood City.....	Pa.	Masontown.....	Pa.	Ravenwood.....	W. Va.
Bridgeport.....	Ohio	Erie.....	Pa.	Maxwell.....	Pa.	Salamanca.....	N. Y.
Brownsville.....	Pa.	Fairchance.....	Pa.	Monongahela.....	Pa.	Suspension Bridge.....	N. Y.
Buffalo.....	N. Y.	Gauley Bridge.....	W. Va.	Moundville.....	W. Va.	Titusville.....	Pa.
Charleston.....	W. Va.	Grafton.....	W. Va.	New Martinsville.....	W. Va.	Washington.....	Pa.
Connellsville.....	Pa.	Huntington.....	W. Va.	Niagara Falls.....	N. Y.	West Newton.....	Pa.
Corry.....	Pa.	Indiana.....	Pa.	North Tonawanda.....	N. Y.	Wheeling.....	W. Va.

and points named on pages 10 to 69 incl., of tariff, as amended, taking same rates or arbitraries higher.

(b) As proportional or reshiping rates on shipments originating at points beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), Northwest Territory (see Note 40, page 84 of tariff, as amended), or traffic covered by paragraph (a) Section B-2 of this Note.

(Concluded on following page)

For explanation of reference marks, see last page of this supplement.

[fol. 187]

[fol. 189]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

PROTEST AND PETITION OF NORRIS GRAIN COMPANY  
FOR SUSPENSION—Filed July 18, 1957

Mr. Harold D. McCoy, Secretary,  
Interstate Commerce Commission,  
Washington 25, D. C.

Dear Sir:

The Norris Grain Company of Chicago, Illinois respectfully protests the following proposed tariff published to become effective July 30, 1957 and petitions the Commission to postpone the effective date thereof and suspend the operation of said schedule, and to enter upon an investigation into and concerning the reasonableness thereof:

Supplement 126 to New York Central Railroad Company  
Tariff 701-A-ICC-1169

In support of its protest the petitioner shows:

## I

This petition is made in behalf of the Norris Grain Company, a corporation existing by and under the laws of the State of Illinois with headquarters at 141 W. Jackson Blvd., Chicago 4, Illinois. We own and operate two grain elevators in that city with a combined capacity of 4,950,000 bushels. We are and have been engaged in the selling, buying, storing and handling of grain since 1908. As such we are vitally interested in rates that affect the movement of grain which originates in Illinois, particularly corn in the instance case, and is destined to points in Central Freight Association Territory.

[fol. 190]

## II

The New York Central's aim in Supplement 126 to their Tariff 701-A-ICC-1169 here protested, is to reduce the rates on Corn Products from origins on the New York Central's Kankakee Belt Line, Moronts, Illinois to Van Siding, Illinois when destined to Central Territory. This



is being done in order that they might meet truck-barge competition to Central Territory from the same origin territory. For the purpose of clarification this petition is being directed at the addition of Central Territory to Circle Reference 400, Page 2 of Supplement 126, NYC-701-A. The New York Central in publishing a 5 cent per hundred pound rate (5½ cents including X-206 Increase) to Kankakee, Illinois on Corn and Corn Products when milled in transit and destined to Central Territory has not only met their competition but has gone far below it. This has been done because of the manner in which the New York Central arrived at their competitors' rates. They took only the barge rate to Chicago, Illinois, plus the proportional rate beyond to Central Territory as the scale with which they were to compete. We feel this is not a fair or just measure of the transportation costs to Chicago via barge since the New York Central has failed to consider the cost of trucking from the farm or country elevator to the river port; the elevation thereat; the trimming and shoveling at Chicago. From this one would surmise the New York Central thinks this corn arrives and is handled at the river port free; this of course, is not true. Although the costs referred to above are not part of the [fol. 191] published barge rate to Chicago, they must be considered as part of the total transportation costs absorbed. Without giving due consideration to all the costs incurred in a truck-barge rail movement, the New York Central has created a level of rates low enough not only to divert all this traffic from the barge lines but have been successful in drawing most of the corn away from several western railroads which operate in the same area. This of course, is in direct violation of the National Transportation Policy which prohibits unfair or destructive competitive practices.

### III

If this level of rates is permitted to become effective without all interested parties being able to present the factual data necessary to prove the tremendous effect which would result from the establishment of these rates, it would have not only a crippling effect upon the competi-

tive modes of transportation and a like transportation as well, but would also create a market, namely Kankakee which for years has been equal in rate structure to Chicago, with privileges unobtainable at Chicago. In conclusion your petitioner is of the opinion that rail carriers should have the opportunity of meeting their competition, but meeting it at a level of rates which would not result in violations of the National Transportation Policy and the Interstate Commerce Act.

We would here have it known that we join in the petition filed by the Transportation Department of the Chicago Board of Trade of which we are a member. Time has not permitted our gathering the necessary data to show the direct impact these rates would have on the Norris Grain Company. We therefore respectfully request that public hearing be held in order that all interested parties might be heard.

[fol. 192]

### Prayer

Wherefore, the petitioner prays that the tariff schedule herein protested be suspended, the effective date thereof postponed, and its application be deferred pending an investigation into and concerning the lawfulness thereof. Also, that a hearing be assigned on this matter at Chicago, Illinois for the convenience of all interested parties.

Respectfully submitted,

Norris Grain Company, V. M. Conley, Manager of  
Transportation, 141 W. Jackson Boulevard, Chi-  
cago 4, Illinois.

Dated at: Chicago, Illinois, July 17, 1957.

Certificate of Service (omitted in printing).

[fol. 193] *Duly sworn to by Lee H. Wagner, jurat omitted in printing.*



[fol. 194]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF EMINGTON GRAIN COMPANY, ET AL. FOR  
SUSPENSION OF TARIFF—Filed July 18, 1957

## Tariff Reference:

Supp. No. 126, N.Y.C. Tariff No. 701-A, R. T. Waite,  
I.C.C. No. 1169, Page No. 2; Supp. 84, H. B. Hinsch's  
Tariff 245-H, I.C.C. No. 4403; Supp. 38, H. B. Hinsch's  
Tariff 535-C, I.C.C. No. 4499

## Effective Date:

July 30, 1957

## Commodity:

Corn and Corn Products

## From:

Points on New York Central Railroad west of Kankakee, Illinois

## To:

Kankakee, Illinois for Transit to destinations in Central, Trunkline, and New England Territories

## Rate:

Proportional of 5¢ (subject to Ex Parte 206), plus proportionals to eastern destinations

Emington Grain Company, Bookwalter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, Mazon Farmers Elevator, By: Edward B. Hayes, Registered Practitioner.

135 South La Salle Street  
Chicago 3, Illinois

[fol. 195]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

## Petition for Suspension of Tariff

Come now your Petitioners, Emington Grain Company, Bookwalter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, and Mazon Grain Company, and respectfully petition that Supplement No. 126, New York Central Railroad Company Tariff 701-A, I.C.C. No. 1169, filed by Agent R. T. Waite to become effective July 30, 1957, be suspended and set for hearing for the reason that said supplement contains Fourth Section departures which have not been authorized by this Commission and for the reasons shown in the Protest against Application For Fourth Section Relief, which is attached hereto and made a part hereof.

Petitioners further request that Section 4, Supplement No. 122, New York Central Tariff 701-A, I.C.C. No. 1169, and the provisions for the non-application of through rates from New York Central Railroad stations west of Kankakee, Illinois, to Central, Trunk Line, and New England Territories in Agent H. R. Hinsch's Tariffs 245-H and 535-C, I.C.C. Nos. 4403 and 4499, be cancelled and that [fol. 196] the Commission otherwise restore the rate schedules with respect to these points in effect prior to December 15, 1956, because it is admitted in the Fourth Section Application, I.C.C. No. 33955, that said supplements promulgate rates which are illegal in that they create Fourth Section departures for which this Commission has not given its authorization.

Respectfully submitted,

Emington Grain Company, Bookwalter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, Mazon Farmers Elevator, By: Edward B. Hayes, Registered Practitioner.

135 South La Salle Street  
Chicago 3, Illinois

July 17, 1957

[fol. 197]

**BEFORE THE INTERSTATE COMMERCE COMMISSION**

**PROTEST BY EMINGTON GRAIN COMPANY, ET AL. AGAINST AP-  
PLICATION FOR FOURTH SECTION RELIEF—Dated July 17,  
1957**

**Tariff Reference:**

Supp. No. 126, N.Y.C. Tariff No. 701-A, R. T. Waite,  
I.C.C. No. 1169; Page No. 2; Supp. 84, H. R. Hinsch's  
Tariff 245-H, I.C.C. No. 4403; Supp. 38, H. R. Hinsch's  
Tariff 535-C, I.C.C. No. 4499

**Commodity:**

**Corn and Corn Products**

**From:**

**Points on New York Central Railroad west of Kanka-  
kee, Illinois**

**To:**

**Kankakee, Illinois for Transit to destinations in Cen-  
tral, Trunkline, and New England Territories**

**Rate:**

**Proportional of 5¢ (subject to Ex Parte 206), plus  
proportionals to eastern destinations**

**Emington Grain Company, Bookwalter Grain Com-  
pany, Cullom Cooperative Grain Company, Dale  
P. Walsh, Charles Treasure, Griswold Grain Com-  
pany, Mazon Farmers Elevator, By: Edward B.  
Hayes, Registered Practitioner.**

**135 South LaSalle Street  
Chicago 3, Illinois**

FERDINAND A. CASHIO

[fol. 198] for Respondent

## BEFORE THE INTERSTATE COMMERCE COMMISSION

## Protest Against Application for Fourth Section Relief

Protestants, Emington Grain Company, Bookwalter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, and Mazon Farmers Elevator, respectfully protest against the Application for Fourth Section Relief, I.C.C. No. 33955, E. R. No. 2386, filed by the Traffic Executive Association-Eastern Railroads in connection with Supplement No. 126, New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169, and in support of their protest show the following:

I. Protestants are operators of grain elevators in central Illinois, located on railroads other than the New York Central Railroad, as follows:

Name	Location	Served By
Emington Grain Company	Emington	Wabash R.R.
Bookwalter Grain Company	Essex	Wabash R.R.
Cullom Cooperative Grain Company	Cullom	Illinois Central R.R.
Dale P. Walsh	Campus	Wabash R.R.
Charles Treasure	Gardner	Gulf, Mobile & Ohio R.R.
Griswold Grain Company	Cullom	Illinois Central R.R.
Mazon Farmers Elevator	Mazon	Atcheson, Topeka & Santa Fe Ry.

[fol. 199] The highway distances of the locations of protestants' elevators from the nearest New York Central Railroad station west of Kankakee, Illinois are as follows:



**Protestant's  
Location**

**Nearest  
N.Y.C. Station**

**Highway  
Distance**

**Emington**

**Dwight**

**11 Miles**

**Essex**

**Union Hill**

**6 Miles**

**Cullom**

**Reddick**

**19 Miles**

**Campus**

**Reddick**

**8 Miles**

**Gardner**

**Dwight**

**10 Miles**

**Mazon**

**Dwight**

**10 Miles**

II. Supplement No. 126 to New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169, Page No. 2, is designed to establish and maintain a proportional rate of 5¢ per cwt. (subject to Ex Parte 206) for corn and corn products from points on the New York Central Railroad west of Kankakee, Illinois to Kankakee, Illinois in transit to destinations in Central, Trunkline, and New England Territories at the proportionals established for many years from Kankakee, Illinois to these points. Related changes here protested were made effective December 15, 1956, in Supplement 84 to Agent H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403, and Supplement 38 to Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499, to permit the combination of the proportionals into aggregate rates to the eastern destinations without protecting the local rate from Kankakee, even though the [fol. 200] combination was lower than the local rate from Kankakee and from points in Indiana. It is admitted by the railroads that the aggregates of these proportional rates will constitute departures from the Fourth Section and in Fourth Section Application, I.C.C. No. 33955, E.R. No. 2386, the approval of the Commission is sought for these departures.

III. The 5½¢ rate presently is in effect under Section 4 of Supplement 122 to NYC Tariff No. 701-A, except that it is not under that supplement available for shipments destined to points in Central Territory. The rates originally were filed under Supplement No. 114, which became effective December 15, 1956. Subsequently Supplement No. 120 was filed to exclude their application to shipments routed via Chicago. Before it became effective, however, Supplement No. 120 was superseded by Supplement No. 121, in

order to make the rate again available for shipments routed via Chicago. Supplement No. 122 later replaced Supplement No. 121. It is admitted in the application for Fourth Section Relief filed herein that all these supplements contain or contained Fourth Section departures and that the Interstate Commerce Commission has not granted any authorization for such departures. All such supplements, including Supplement No. 122 presently in effect, therefore were promulgated in violation of Section 4 of the Interstate [fol. 201] Commerce Act and the rate promulgated therein was and is illegal. Supplements No. 122 to NYC Tariff 701-A, 84 to H. R. Hinsch's Tariff 245-H, and 38 to H. R. Hinsch's Tariff 534-C should therefore be withdrawn and the rates in effect prior to December 15, 1956, subject to Ex Parte 206, should be restored, pending hearing on Fourth Section Application No. 33955. The Commission has plenary power under Section 15(1) to order such action by the respondent railroads where the violation of the Act is admitted as it is here, and the Commission is hereby requested to enter such an order.

IV. The 5½¢ rate for which approval is sought in said Fourth Section Application No. 33955 has disrupted the long standing freight rate scale of the railroads serving this area and is disrupting the marketing pattern of corn in the areas served by protestants' elevators. This disruption has resulted in a diversion to elevators on the New York Central of much of the corn which prior to December 15, 1956, normally came to protestants' elevators, and is discriminatory against protestants in violation of Section 3(1) of the Interstate Commerce Act. Only by a restoration of the rates on corn and corn products in effect from the New York Central stations west of Kankakee to Kankakee prior to December 15, 1956, subject to Ex Parte 206, can the freight rate structure be restored and further injury to protestants and other similarly situated elevator operators be [fol. 202] avoided. No other alternative appears feasible nor desirable since a uniform reduction of rates to the level established by the New York Central by all railroads serving the area would create an abnormally depressed rate structure which the New York Central does not allege would

be compensatory to itself, and which would not be compensatory to it or to the other railroads involved. If the former rate structure is not restored, a disorderly rate war among the railroads involved aimed at recovery of traffic lost to rate-cutting competitors appears likely to result, with resulting injury to shippers and railroads alike.

Wherefore, protestants pray that the above application be set for hearing in Chicago, Illinois, and that pending entry of a final order in this proceeding by the Commission, the Relief Carriers be ordered to cease and desist from exacting the rate specified in Sec. 4, Supp. 122, NYC Tariff 701-A, I.C.C. No. 1169, to restore the Kankakee local rate as the minimum for combinations of proportional rates across Kankakee, and otherwise to restore the rates for the points specified in such Section 4 as they existed prior to December 15, 1956, subject to increases in Ex Parte 206, by cancellation of:

(1) All rates on Corn to Kankakee, Illinois, originally established in Section 4, Page 3, Supplement 114, New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169.

[fol. 203] (2) All rates on Corn to Kankakee, Illinois, published in Section 4, Page 40, Supplement 122, New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169, which is a re-issue of the rates covered by paragraph (1).

(3) Item 279 (new) and the concluding part of the Exception in Note 20, which refers to Item 279, all on Page 2, Supplement 84, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403, which originally became effective December 15, 1956.

(4) Item 279 on Page 17 and the concluding part of the Exception in Note 20, which refers to Item 279 on Page 11, both in Supplement 93, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403, which is a re-issue of the provisions of paragraph (3).

(5) Paragraph B-6 of Exceptions to Note 45, shown on Page 4, Supplement 38, Central Territory Railroads Tariff

Bureau Freight Tariff 535-C, I.C.C. 4499, originally effective December 15, 1956 and still in effect.

Respectfully submitted,

Emington Grain Company, Bookwalter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, Mazon Farmers Elevator, By: Edward B. Hayes, Registered Practitioner.

135 South LaSalle Street,  
Chicago 3, Illinois,  
July 17, 1957.

[fol. 204] Certificate of service (omitted in printing).

[fol. 205]

BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF A. L. MECHLING BARGE LINES, INC.—  
Filed July 18, 1957

Tariff Reference: Supp. No. 126, N.Y.C. Tariff No. 701-A,  
R. T. Waite, I.C.C. No. 1169, Page No. 2; Supp. 84,  
H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403; Supp. 38,  
H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499

Effective Date: July 30, 1957

Commodity: Corn and Corn Products

From: Points on New York Central Railroad west of  
Kankakee, Illinois

To: Kankakee, Illinois for Transit to destinations in  
Central, Trunkline, and New England Territories

Rate: Proportional of 5¢ (subject to Ex Parte 206),  
plus proportionals to eastern destinations

A. L. Mechling Barge Lines Inc., By: Edward B.  
Hayes, Registered Practitioner.

135 South La Salle Street  
Chicago, 3, Illinois



[fol. 206]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

## Petition for Suspension of Tariff

Comes now your Petitioner, A. L. Mechling Barge Lines Inc., and respectfully petitions that Supplement No. 126, New York Central Railroad Company Tariff 701-A, I.C.C. No. 1169, filed by Agent R. T. Waite to become effective July 30, 1957, be suspended and set for hearing for the reason that said supplement contains Fourth Section departures which have not been authorized by this Commission and for the reasons shown in the Protest against Application For Fourth Section Relief, which is attached hereto and made a part hereof.

Petitioner further requests that Section 4, Supplement No. 122, New York Central Tariff 701-A, I.C.C. No. 1169, and the provisions for the non-application of through rates from New York Central Railroad stations west of Kankakee, Illinois, to Central, Trunk Line, and New England Territories in Agent H. R. Hinsch's Tariffs 245-H and 535-C, I.C.C. Nos. 4403 and 4499, be cancelled and that the Commission otherwise restore the rate schedules with respect to these points in effect prior to December 15, 1956, because it is admitted in the Fourth Section Application, I.C.C. No. 33955, that said supplements promulgate rates which are illegal in that they create Fourth Section departures for which this Commission has not given its authorization.

Respectfully submitted,

A. L. Mechling Barge Lines Inc., By: Edward B. Hayes, Registered Practitioner.

135 South LaSalle Street  
Chicago 3, Illinois

[fol. 208]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF ILLINOIS GRAIN CORPORATION FOR SUSPENSION—  
Filed July 22, 1957

Mr. Harold D. McCoy, Secretary  
Interstate Commerce Commission  
Washington 25, D. C.

Dear Sir:

Comes now your petitioner, Illinois Grain Corporation, 141 West Jackson Boulevard, Chicago (4), Illinois. The Illinois Grain Corporation is a corporation organized under the laws of the state of Illinois and is affiliated with the Illinois Agricultural Association which is the state Farm Bureau in Illinois with approximately 195,000 farm families.

The Illinois Grain Corporation operates a 6,500,000 bushel terminal elevator in the Lake Calumet Harbor at Chicago, Illinois. It owns and operates four elevators on the Illinois River and one elevator in Illinois on the upper Mississippi River and one elevator at Tampa, Florida. It has a membership of 159 farmer cooperative elevators in Illinois who own stock in the corporation. Its purpose is to buy and sell grain for its members.

## I

That this petitioner respectfully requests that the Interstate Commerce Commission suspend Supplement No. 126 to NYC Tariff No. 701-A ICC No. 1169 scheduled to become effective July 30, 1957.

[fol. 209] This petitioner supports the petition for suspension filed by the Board of Trade of the City of Chicago and further states that Supplement No. 126 here protested involves the movement of corn products from origins in Illinois located on the New York Central's Kankakee Belt Line from Morrois, Illinois to Van's Siding, Illinois, ultimately destined to points in the Central Freight Association

Territory. While page 2 of Supplement No. 126 opposite the circle 400 reference mark shows the application of rates other than the Central Freight Association Territory, this petition of suspension is directed solely to the addition of Central Territory as underscored thereon, denoting an extension of its application to the Central Freight Association Territory. The purpose of the proposed rate is to meet truck and barge competition from the same origin territory to the Central Freight Association Territory which presently moves on an aggregate of charges including: Trucking from farm or country elevator to the river port; elevation thereat; the barge rate to Chicago; the established rail proportional rate from Chicago to the final destination in Central Freight Association Territory. An examination should be made of all costs incurred in the movement. No such costs have been submitted by the New York Central. They should be required to submit such costs.

## II

That Supplement 126 to New York Central, Tariff No. 701-A ICC No. 1169 was issued on June 28, 1957 to become effective July 30, 1957 without observance of approved Rules of Procedure required by Section 5a of the Interstate Commerce Act.

The traffic matters contained in Supplement No. 126 to NYC Tariff 701-A scheduled to become effective July 30, 1957 were:

- [fol. 210] 1. Without a written proposal that shippers or other interested parties could examine.
2. Without public notice of any description.
3. Without opportunity for shippers or other interested parties to request and participate in a public hearing.

## III

That the proposed rates prevent the application of the reduced level of rates from applying on whole corn, resulting in unjust discrimination against that particular type of traffic under Section 3 of the Interstate Commerce Act.

The rates apply only on corn milled at some intermediate milling point and reshipped as corn products.

#### IV

That the proposed rates create a large area east and south of Kankakee, Illinois in which the carriers are seeking relief under the Fourth Section of the Interstate Commerce Act in Petition No. 33955 resulting in higher rates and causing unjust discrimination in said area.

#### V

In conclusion petitioner believes that opportunity should be given to shippers to present to the Commission evidence which will show that the proposed rates are unjust and unreasonable, in violation of Section 1 and that if permitted to become effective will be prejudicial and discriminatory to protestant, Illinois Grain Corporation and its various elevator facilities and preferential of other parties and elevator facilities who are so located as to enjoy the use of the preferential rates, in violation of Section 3.

Wherefore, the petitioner prays that the tariff schedule herein protested be suspended, the effective date postponed [fol. 211] and its application be deferred pending an investigation into and concerning the lawfulness thereof, and petitioner further requests that hearing be assigned to Chicago, Illinois for convenience of parties affected.

Respectfully submitted,

Illinois Grain Corporation, By Thomas J. Crowe,  
Vice President and Traffic Manager.

Certificate of service (omitted in printing).

Dated at: Chicago, Illinois, July 16, 1957.



[fol. 212]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

Commission's No. 33955

E.R. No. 2386

June 28, 1957

File: C1301-383

FOURTH SECTION APPLICATION BY TRAFFIC EXECUTIVE  
ASSOCIATION—EASTERN RAILROADS—Filed June 27, 1957To the INTERSTATE COMMERCE COMMISSION  
Washington 25, D.C.

O. E. Schultz, Vice Chairman, Traffic Executive Association-Eastern Railroads, for and on behalf of carriers parties to Agent H. R. Hinsch's Tariff No. 245-H, ICC No. 4403 and No. 535-C, ICC No. 4499, as well as New York Central Railroad Tariff No. 701-A, ICC No. 1169, insofar as they participate in the traffic herein involved, hereby respectfully petition the Interstate Commerce Commission for authority to maintain the rates hereinafter set forth without observing the long-and-short-haul provision of Section 4(1) of the Interstate Commerce Act, as amended.

The rates for which relief is herein sought were initially published in Supplement 114 to NYC Tariff 701-A, ICC 1169, with corresponding necessary amendments in Supplement 84 to Agent H. R. Hinsch's Tariff 245-H, ICC No. 4403, and Supplement 38 to Agent H. R. Hinsch's Tariff 535-C, ICC 4499, on traffic destined to western termini and east thereof and became effective December 15, 1956, while on traffic to Central Territory the rates have been published to become effective July 30, 1957 in Supplement No. 126 to NYC Tariff 701-A, ICC No. 1169, to apply in conjunction with rates published in Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499.

[fol. 213]

## I

It is proposed to continue, establish and maintain for interstate application a 5-cent proportional rate, subject to Ex Parte 206, (currently 5½ cents) on corn and corn products, minimum weight 100,000 pounds, via NYC(W) direct,

**FROM: Van's Siding, Ill.**

**Lehigh, Ill.**

**Union Hill, Ill.**

**Reddick, Ill.**

**Blair, Ill.**

**Dwight, Ill.**

**Smith Spur, Ill.**

**Sunbury, Ill.**

**Budd, Ill.**

**Missal, Ill.**

**Streator, Ill.**

**Milla, Ill.**

**Lostant, Ill.**

**Priscilla, Ill.**

**McNabb, Ill.**

**Granville, Ill.**

**Moronts, Ill.**

**To: Kankakee, Ill.**

for application on traffic destined ultimately to Central Freight Territory, Western Termini of Eastern Trunk Lines in the States of New York, Pennsylvania and West Virginia and points east thereof in Trunk Line Territory and New England Territory as defined in Agent H. R. Hinsch's 3-I, I.C.C. No. 4175, on basis of aggregate of intermediate rates reflecting proportional rates to and from Kankakee named in NYC Tariff 701-A, I.C.C. No. 1164, Agent H. R. Hinsch's Tariffs 245-H and 535-C, I.C.C. Nos. 4403 and 4499 respectively.

Provisions have also been made for the non-application of through rates from these stations where the combination of the 5½ cent proportional rate to Kankakee and the re-shipping rate from Kankakee is lower via all routes of carriers parties to Agent H. R. Hinsch's Tariff 245-H and 535-C, ICC Nos. 4403 and 4499, respectively.

[fol. 214]

## II

The proportional rate of 5½ cents from the Illinois points involved herein to Kankakee is published subject to Rule 27 at origin and destination and conforms to the

Fourth Section of the Act. The proportional rates published from Kankakee and likewise from Chicago to destinations in Central, Trunk Line and New England Territories in Agent H. R. Hinsch's Tariffs ICC Nos. 4403 and 4499 are protected by outstanding-fourth section relief afforded by Fourth Section Order Nos. 12044, 13247, 13691, 16803, 18407, et al. Therefore, no unprotected departures occur in either factor of the combination here involved,

When the 5½-cent proportional rate referred to herein to Kankakee, as published in NYC Tariff 701-A, ICC No. 1169, is added to the reshipping rates applicable from Kankakee, which are the same as from Chicago, to the involved destination territory published in Agent H. R. Hinsch's Tariffs 535-C, ICC No. 4499 and 245-H, ICC No. 4403, they produce through combination rates which are lower than the local or flat rates applicable from Kankakee and stations east, north and south thereof located along routes of eastern lines to the extent that they participate in the involved tariffs to points in the destination territory referred to, in which instances, unauthorized departures occur due to higher local rates from intermediate points, and additional relief appears necessary.

Exhibit No. 1, attached hereto and made a part hereof, is a statement showing typical examples of fourth section departures via representative direct and indirect routes. This exhibit shows information as to rates, mileages, earnings and other data required by the Commission's Rules of Practice.

[fol. 215] Exhibit No. 2, attached hereto and made a part hereof, is a map showing the origin stations and departure routes shown on Exhibit No. 1. The color scheme used on this map is fully explained on the fly-leaf attachment.

Exhibit No. 3, attached hereto and made a part hereof, is a statement of Average Revenues and Expenses for the Class I Railways of the Eastern District for the year 1955.

### III

This application is based on the following facts which present all of the circumstances and conditions relied upon by your petitioner in justification of the relief herein sought.

The New York Central Railroad stations from which the 5½-cent proportional rate to Kankakee will apply are located in close proximity to the Illinois River as shown in Exhibit No. 4, attached hereto and made a part hereof.

The barge rates on corn from the river points (other than the origins involved herein) to Chicago are shown on Exhibit No. 5, attached hereto and made a part hereof. This exhibit also shows the rail origins here involved and the truck distance to the river barge points.

As a direct result of the low barge rates to Chicago, corn demands a more favorable price at the river points as compared with the price at interior elevators. Consequently, even though there are local elevators at the involved origin stations having capacity sufficient to provide carload movements of approximately 3,000 cars per year, no corn has moved via rail from these stations to Kankakee because over the years this traffic has been trucked to elevators located on the Illinois River for subsequent movement via barge to Chicago, from which the corn can be [fol. 216] reshipped east and has the benefit of the Chicago reshipping rates. Due to this arrangement naturally the corn becomes more valuable from a billing standpoint. This situation can best be illustrated by the fact that the New York Central in its Tariff 701-A, I.C.C. No. 1169, circle reference No. 167, provides the following rate application:

"On Grain from Chicago, Ill., Gibson, Ind., Hammond, Ind., Indiana Harbor, Ind. and South Chicago, Ill. to Kankakee, Ill. billed for transit, charges will be collected on the basis of 6 cents (subject to X-206) per 100 pounds on the weight of the inbound tonnage."

This illustrates that ex-barge corn has the benefit of Chicago reshipping rates through Kankakee for milling in transit. All the New York Central is undertaking to do is to meet the barge competition via Chicago by bringing the grain into Kankakee by rail from the involved origins and letting the reshipping rates apply as is currently the practice. All that is involved is a substitution of rail service.



to Kankakee, in lieu of barge-rail service via Chicago, as under the latter arrangement Chicago reshipping rates apply. All that is here intended is to apply reshipping rates from Kankakee, which are identically the same as from Chicago, when applied in the same manner as the Chicago ex barge proportional rates.

Exhibit No. 6, attached hereto and made a part hereof, is a copy of Note 20, Supplement 84 to CTR Tariff 245-H, Agent H. R. Hinsch's ICC No. 4403, which provides for the application of reshipping or proportional rates from Chicago, Joliet, Kankakee, etc., to destinations east of the Buffalo-Pittsburgh line and that the local rate need not be protected as minima in connection with shipments moving to Chicago via river or canal. A similar provision is published in Note 45 in Supplement No. 38 to CTR Tariff 535-C, Agent H. R. Hinsch's I.C.C. No. 4499, naming rates [fol. 217] from Kankakee to so-called Central Territory and Western Termini of Eastern Trunk Lines.

The foundation for this Fourth Section application hinges entirely on the fact that on corn arriving at Chicago by barge, the eastern lines apply the proportional or reshipping rates from Chicago to the East. Fourth Section relief authorizing higher rates from points intermediate to Chicago is granted under Fourth Section Application No. 23982 (277 ICC 75), Fourth Section Order No. 16365, (temporary). All this application seeks is like authority to maintain higher rates from origin intermediate stations to Kankakee when the corn is rail hauled at the 5½-cent proportional rate from the involved origin stations to Kankakee, plus reshipping rates therefrom.

The following tabulation shows the present local and proportional or reshipping rates on grain from Kankakee and Chicago to typical destinations, together with their respective differences or spreads between the local and proportional rates:

**DOMESTIC GRAIN PRODUCTS RATES, CARLOAD IN EFFECT FROM  
KANKAKEE, ILL. AND EX BARGE FROM CHICAGO, ILL.**

(Rates shown are in cents per 100 pounds and are subject  
to Ex Parte 206)

To:	Local	Proportional or Reshipping	Differ- ence
Buffalo-Pittsburgh .....	(2) 54½	(1) 38½	16
Baltimore-Norfolk .....	(3) 63	(3) 46½	16½
Syracuse-Rochester ....	(3) 59½	(3) 43	16½
Albany, N.Y. ....	(3) 64	(3) 47½	16½
New York, N.Y. ....	(3) 66	(3) 49½	16½
Boston, Mass. ....	(3) 68	(3) 51½	16½

(1) CTR 535-C, ICC No. 4499

(2) NYC 701-A, ICC No. 1169

(3) CTR 245-H, ICC No. 4403

[fol. 218] In the case of Chicago, Fourth Section relief is available under Fourth Section Application No. 23982 (277 ICC 75), Fourth Section Order No. 16365, (temporary).

In view of the fact that both factors of the aggregate of intermediate rates over Kankakee either conform or are amply protected by outstanding relief and petitioner was merely meeting a competitive barge and barge-rail situation where barged corn had the benefit of the Chicago-Kankakee reshipping rates under aforementioned Fourth Section Relief, it was felt, in principle, the same situation was involved in the application of the aggregate of intermediates of the 5½-cent proportional rate to and the reshipping rate from Kankakee. It was therefore concluded that no additional relief was necessary and publication was accordingly made.

On February 26, 1957, the New York Central Railroad was advised by the Commission that due to the restrictive application of the proportional rates, unauthorized departures were created at destination in that higher rates applied to intermediate points in Central Territory. Whereupon investigation was made and it was determined that departures, as stated, were created unknown to the peti-

tioner. In order that these unauthorized destination departures could be eliminated, a proposal was placed on the docket to extend the application of the involved  $5\frac{1}{2}$ -cent proportional rate to destinations in Central Territory. Publication of this extension has now been made in Supplement 126 to NYC Tariff 701-A, ICC No. 1169, effective July 30, 1957, which automatically removes such departures.

With regard to origin Fourth Section departures or the maintenance of higher rates from stations east thereof intermediate to Kankakee, it is contended that this situation [fol. 219] is no different than exists with respect to the corn movement by barge from involved stations over Chicago. However, investigation does reveal that because of the nature of the Fourth Section relief applying currently, technically Fourth Section Departures exist in the application of the combination rate, proportional to Kankakee and reshipping beyond.

Investigation developed that technically departures exist at origin via direct and indirect routes in that the aggregate of intermediate rates from the involved origins to Kankakee and the reshipping rates beyond would be lower than the local rates from Kankakee and points east thereof as illustrated in Exhibit No. 1. Additional relief is therefore necessary at origin; thus this application.

In the exercise of its managerial discretion the New York Central feels it should be permitted to participate and recapture its fair share of this corn and to transport it from the involved stations to Kankakee when for movement beyond to destinations in Central, Trunk Line and New England Territories.

In actual practice today the corn is trucked by the farmers from the origin areas to river points at his expense. Under the published rate of  $5\frac{1}{2}$  cents to Kankakee, shippers are given the opportunity to bring the corn to elevators at involved points for subsequent shipment beyond Kankakee on basis of the same reshipping rates from Kankakee as applicable on ex-barge corn reshipped from Chicago. In every case the reshipping rates from Kankakee and Chicago are identical.

Exhibit No. 7, attached hereto and made a part hereof, is a copy of Item 279 in Supplement 84 to CTR Tariff 245-H, Agent H. R. Hinsch's ICC No. 4403, which provides a general exception to the application of rates on grain and [fol. 220] products thereof from the involved New York Central stations when routed via Kankakee for milling in transit; combination rates apply in lieu thereof. This provision is instrumented by the fact that in connection with the Kankakee rate application, rail movement is utilized to and from Kankakee and appropriate provisions had to be published to cancel the application of through rates from involved territory to destinations beyond Kankakee, whereas in connection with the barge movement to Chicago, there being no prior rail movement, no such provision is necessary as ex-barge grain has the benefit of Chicago reshipping rates.

Though seemingly Fourth Section departures would result from the application of the 5½-cent proportional rate when added to the reshipping rate, it is felt such departures are technically theoretical as petitioning carriers is merely attempting to meet a competitive situation with factors of aggregate of intermediate rates of which the 5½-cent proportional being subject to Rule 27 conforms to the fourth section of the Act, whereas the reshipping rates are already afforded Fourth Section Relief.

#### IV

##### *Related Proceedings*

Applicants are not aware of any related proceedings pending before the Commission.

#### V

##### *Conclusion*

Petitioning carriers are merely attempting to meet a competitive situation with no change whatever in the Kankakee reshipping rates and it is all premised on meeting "like with like" the ex-barge reshipping basis from Chicago [fol. 221] versus rail movement to Kankakee on a competitive proportional rate to Kankakee. Again reiterating, the



reshipping rates on grain from Chicago and Kankakee are identical.

Petitioning carriers respectfully allege that circumstances confronting them are no different from adjustments involving ordinary departures from the long-and-short-haul provision of Section 4(1) of the Act. Through the continuation and publication of the 5½-cent rate to Kankakee as a proportional rate applicable only on corn milled in transit, the involved railroad, the New York Central, is able to recapture a share of the corn movement. Based on elevator capacity at origin stations, it can at best recover approximately 6,000,000 bushels annually, and the barge river movement into Chicago for the year 1955 approximated 14,887,000 bushels, thus demonstrating the rate will have only a partial effect on waterway corn, and the New York Central should not be denied a share of the movement because of theoretical Fourth Section departures.

WHEREFORE, your petitioners respectfully pray that your Commission expedite the handling of this application and grant the relief sought.

[fol. 222] All of which is,

Respectfully submitted,

O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads, Agent for Applicants, One Park Avenue, New York 16, N.Y.

*Duly sworn to by O. E. Schultz, jurat omitted in printing.*

**STATEMENT OF RATES, REVENUES, ETC., ON CORN CARLOADS VIA SHORT LINE ROUTES  
AND VIA REPRESENTATIVE DEPARTURE ROUTES (SUBJECT TO EX PARTE 206)**

TO	Route No.	Miles	Per- cent Cir-	Rates in cents per 100 Pounds	Ton Mile (Mills)	Per Car (Dol- lars)	Per Car (Cents)
New York, N.Y.				(4)		(A)	
From:							
Moronts, Ill.	1	991.3		(1) 54½	10.99	#347.00	35.00
Via Shortest Working Route (Departure Route)				(2) 72½	14.62	435.00	43.88
Via Departure route	2	1047.9	6%	(1) 54½ (2) 72½	10.40 13.83	#347.00 435.00	33.11 41.51
Via Departure Route	3	1184.2	19%	(1) 54½ (2) 72½	9.20 12.24	#347.00 435.00	29.30 36.73
<b>HIGHER RATED INTER- MEDIATE POINTS OF ORIGIN ON DEPARTURE ROUTES</b>							
Kankakee, Ill. (First higher rated intermediate origin)	1	907.8		(2) 66 (3) 49½	14.54 10.90	396.00 297.00	43.62 32.72
Hamilton, Ind. (Last higher rated intermediate origin)	1	740.3		(2) 56	15.12	336.00	45.39
Kankakee, Ill. con- (First Higher rated intermediate origin)	2	964.4		(2) 66 (3) 49½	13.68 10.26	396.00 297.00	41.06 30.80
Butler, Ind. (Last Higher rated intermediate origin)	2	785.9		(2) 56	14.25	336.00	42.75
Kankakee, Ill. con- (First higher rated intermediate origin)	3	1000.7		(2) 66 (3) 49½	13.19 9.89	396.00 297.00	39.57 29.68
Lawrenceburg Jct., Ind. (Last higher rated intermediate origin)	3	874.2		(2) 56	12.81	336.00	38.44

FOR EXPLANATION OF ROUTES, REFERENCES AND TARIFF AUTHORITIES SEE PAGE  
NO. 2.

[Vol. 223]

EXHIBIT No. 1

223

147

## EXPLANATION OF ROUTES

- 1—NYC(W)-North Liberty, Ind.-Wabash RR-Buffalo, N.Y., DL&W.
- 2—NYC(W)-Gardenville, N.Y.-NYC(E).
- 3—NYC(W)-Kankakee, Ill.-NYC(C)-via Cincinnati, Ohio to Cleveland Ohio-NYC(W)-Gardenville, N.Y.-NYC(E).

## EXPLANATION OF REFERENCES

- (A)—Based on average load of 60,000 pounds from Kankakee, Ill. except as noted.
- #—Based on minimum weight from Kankakee, Ill. of 60,000 pounds and 100,000 pounds to Kankakee, Ill.
- (1)—Proposed 5 cent rate to Kankakee, Ill. plus 49½ cent proportional rate beyond as authorized by CTB Tariff 245-H, ICC 4403. (49½ cents is also the proportional rate from Chicago).
- (2)—Local rate as authorized by CTB Tariff 245-H, ICC 4403.
- (3)—Proportional rate beyond applying on Ex-Barge traffic.
- (4)—Subject to Ex Parte 206 increase.

## TARIFF AUTHORITIES

NYC 2801, I.C.C. L.S. No. 1536  
NYC 21, I.C.C. No. 8515  
NYC A-1458, I.C.C. No. 16802  
Wabash B-15221, I.C.C. No. 6442  
DL&W 1655, I.C.C. No. 22030  
CTR 245-H, I.C.C. No. 4403



[fol. 225]

**EXHIBIT No. 2**

Explanation of color scheme used on map to depict departures in rates on Corn, carloads

**FROM**

Moronts, Ill.

**TO**

New York, N.Y.

**RED LINE:** Represents typical indirect departure route (in part) via NYC RR(W)-Gardenville, N.Y. and NYC RR(E)

**RED-VIOLET LINE:** Represents shortest tariff and departure route (in part) via NYC RR(W)-North Liberty, Ind., Wabash RR-Buffalo, N.Y. and DL&W RR.

**RED-BROWN LINE:** Represents typical indirect departure route (in part) via NYC RR(W)-Kankakee, Ill.-NYC RR(C)-Cleveland, Ohio-NYC RR(W)-Gardenville, N.Y. and NYC RR(E).

The origin point is circled in **BLACK**.

Other involved origins are underscored in **BLUE**.

The representative higher rated intermediate origin points are circled with **SOLID LINES** in the same color as the departure route.

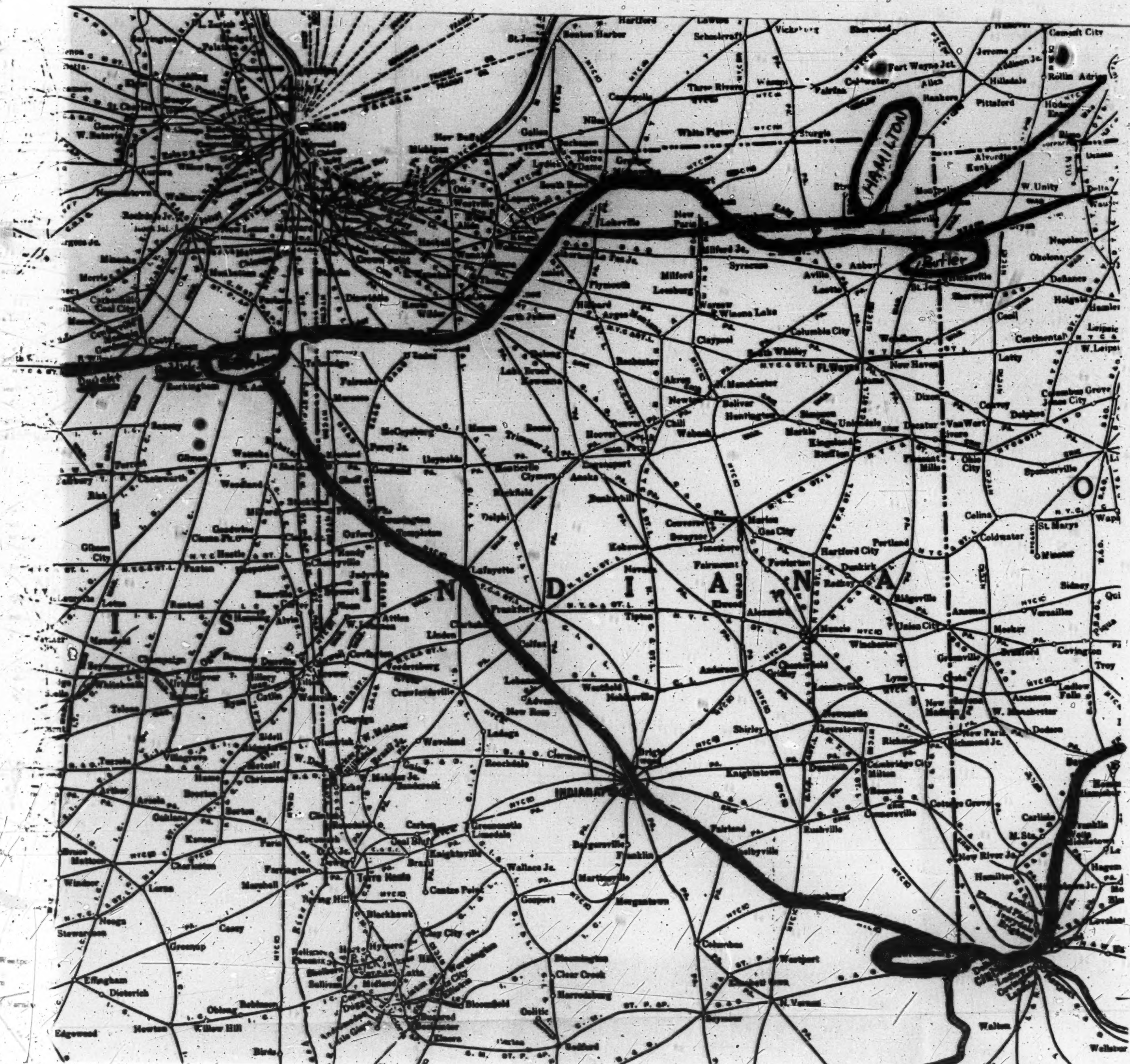
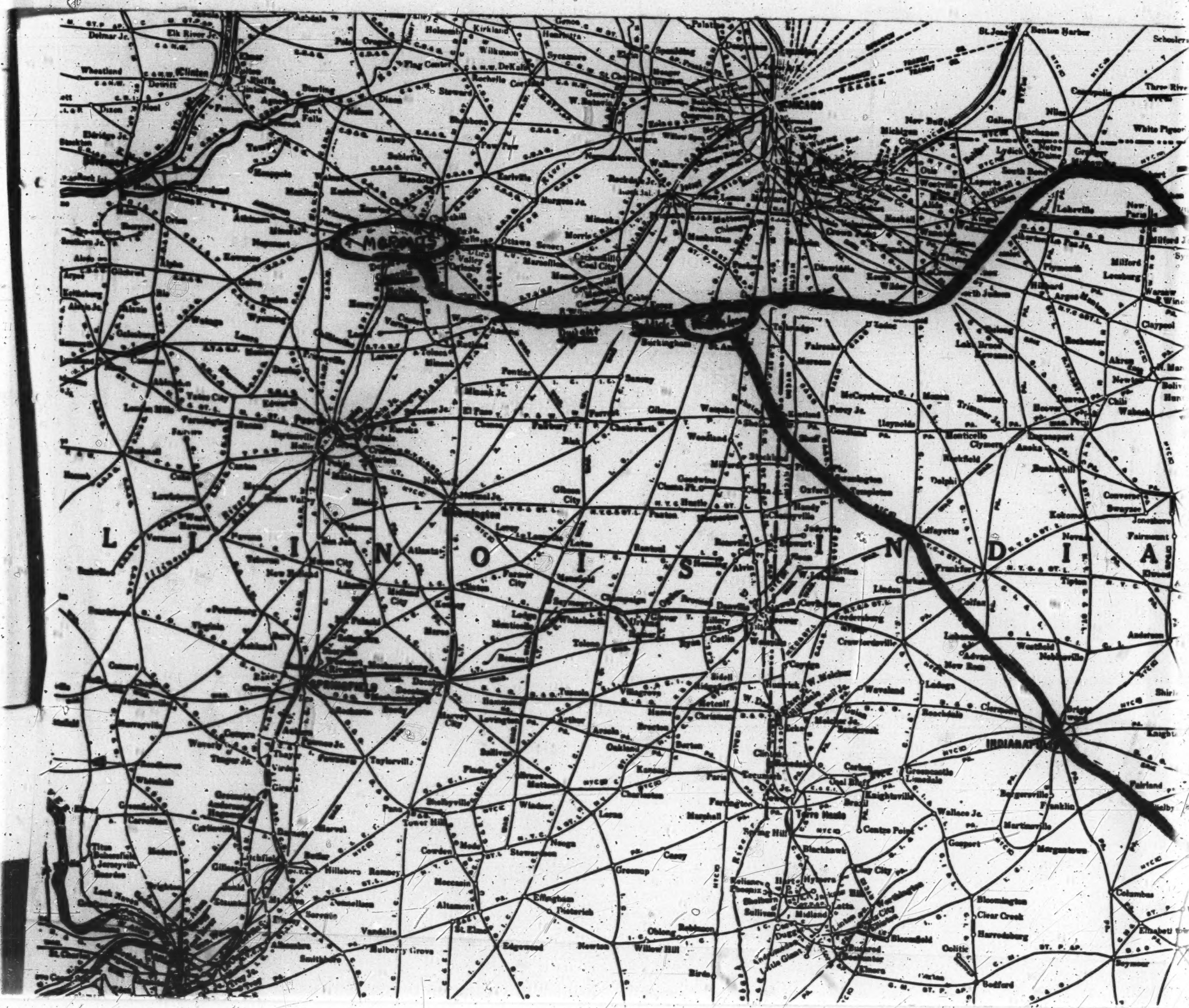


**EXHIBIT No. 2 (Cont.)**

**(See opposite)**









## EXHIBIT No. 4

GRAIN ELEVATORS ON NYC(W) AT INVOLVED STATIONS

<u>Railroad Mileage to Kankakee Illinois</u>		<u>Approximate Highway Miles to Nearest River Point</u>		<u>Grain Elevators Capacity In Bushels</u>
5.2	Van's Siding	35	E. S. Hamilton	8,000
14.6	Union Hill, Ill.	28	Farmers Elevator Co.	12,000
20	Reddick, Ill.	28	Farmers Elec. Co.	15,000
23	Blair, Ill.	25	Nielsen Grain Co.	5,000
29.2	Dwight, Ill.	19	Farmers Co-Op Elev.	45,000
34.4	Sunbury, Ill.	18	Federal No. Iowa Grain Co.	25,000
39.3	Budd, Ill.	17	Cahill Grain Co.	30,000
45.7	Missal, Ill.	19	Missal Farmers Grain Co.	25,000
55.6	Altmar, Ill.	15	Hoarty Grain Co.	16,000
60.7	Milla, Ill.	13	Milla Elevator Co.	20,000
64.4	Lostant, Ill.	12	Lostant Grain Co.	20,000
68.6	Priscilla, Ill.	11	H. L. Phillips Grain Co.	20,000
73.4	McNabb, Ill.	10	McNabb Grain Co.	100,000
79.3	Granville, Ill.	4	Granville Cooperative Co.	15,000
83.5	*Moronts, Ill.	on river	J. E. Bonges Grain Co.	<u>15,000</u> 371,000 Bu.

\*No barge facilities.



## REVENUES, EXPENSES, AND FREIGHT TRAFFIC

Class I Railroads of the Eastern District  
Calendar Year Ended December 31, 1935

Road	Miles of road operated			Operating revenues		Operating expenses		Operating ratio		Net railway operating income		Revenue ton-miles carried	Ton-miles		Average load per revenue ton (tonnes)	Loaded freight car-miles	Net tons per loaded car	Per ton-mile		Per car-mile
	Average during year	Average during year - freight service	Total all trucks at close of year	Total	Freight proportion	Total	Freight proportion	Total	Pct.	Total	Freight proportion		Revenue	Revenue and non-revenue				Freight revenue (cents)	Freight expense (cents)	
1	2	3	4	5	6	7	8	9-15	10-16	11	12	13	14	15	16-18-19	17	18-19-17	19-20-19	20-21-19	21-22-17
<b>NEW ENGLAND RAILROADS:</b>																				
Amherst & Andover	400	594	840	813 309 641	812 553 484	810 573 484	809 193 086	79.44	71.21	81 015 490	81 758 837	3 475 955	470 543 000	481 872 000	135.37	17 381 630	27.88	2.668	1.953	72.632
Amherst & Andover	1 575	1 564	1 018	85 984 620	84 911 123	85 727 574	84 144 578	76.31	54.80	6 894 531	19 144 894	18 078 157	2 971 371 000	3 006 619 000	104.36	116 563 138	25.79	2.319	1.117	59.119
Canadian National Lines to New England	172	172	251	2 578 000	2 415 254	2 478 227	2 180 942	85.89	90.30	1 121 442	630 684	1 011 705	117 080 000	119 197 000	115.73	4 404 975	27.04	2.063	1.863	54.830
Canadian Pacific (lines to Maine)	234	234	349	4 445 871	5 538 843	5 579 407	4 248 347	84.33	76.43	88 244	844 638	2 797 794	396 901 000	435 994 000	172.73	14 535 340	28.59	1.400	1.070	38.240
Canadian Pacific (lines to Vermont)	90	90	135	2 492 130	2 333 143	2 332 144	2 200 000	88.65	86.65	997 088	481 947	2 197 718	160 984 000	161 440 000	67.16	6 492 882	24.87	1.449	1.255	35.934
Central Vermont	428	428	784	20 757 737	20 887 279	20 731 208	17 738 199	85.51	74.28	228 000	300 374	1 441 750	524 495 000	530 537 000	157.79	20 554 715	27.00	1.843	1.380	47.010
Maine Central	464	464	1 770	24 990 572	22 344 250	22 321 763	14 553 944	77.43	65.13	2 280 601	4 980 118	7 117 768	905 944 000	916 048 000	121.80	32 927 975	27.83	2.484	1.606	67.858
New York Connecting	71	70	65	4 379 424	4 070 199	4 075 363	2 270 244	64.12	55.78	852 934	317 871	5 191 821	302 523 000	302 523 000	19.75	4 545 621	23.44	1.970	2.214	89.149
New York, New Haven & Hartford	1 709	1 704	1 767	155 118 869	91 732 257	127 034 004	59 559 252	61.90	65.34	5 732 339	19 587 869	22 723 274	3 499 141 000	3 535 824 000	151.75	141 700 241	24.59	2.460	1.739	64.739
Salisbury	392	392	480	4 811 335	4 811 335	4 811 335	3 957 306	82.25	82.25	3 957 306	81 937	7 117 673	841 307 000	843 395 000	140.78	8 475 017	28.04	1.994	1.061	55.442
<b>Total - New England Roads</b>	<b>6 217</b>	<b>6 176</b>	<b>10 734</b>	<b>311 105 589</b>	<b>224 396 831</b>	<b>268 814 841</b>	<b>144 762 345</b>	<b>79.96</b>	<b>64.51</b>	<b>17 235 080</b>	<b>49 051 912</b>	<b>57 645 791</b>	<b>9 390 291 000</b>	<b>9 513 489 000</b>	<b>138.05</b>	<b>147 713 418</b>	<b>25.71</b>	<b>2.443</b>	<b>1.550</b>	<b>61.025</b>
<b>ROCKMOUNT RAILROADS:</b>																				
Atlantic & Danville	213	213	345	1 451 135	1 451 135	1 451 135	1 451 135	75.54	75.54	13 704	13 704	987 300	102 175 000	105 278 000	103.44	3 290 000	32.00	1.617	1.221	50.184
Chesapeake & Ohio	5 113	5 068	10 152	380 381 057	345 304 376	378 841 414	233 994 778	68.07	64.06	68 909 097	80 891 235	121 712 784	35 435 511 000	36 027 945 000	288.94	770 118 171	44.44	1.033	0.645	47.435
Harbors & Western	2 138	2 104	4 779	200 041 143	200 041 143	138 719 684	120 485 126	64.41	60.21	37 441 242	48 806 340	70 409 617	19 953 841 000	20 492 732 000	281.39	434 673 985	49.42	1.005	0.605	48.338
National, Fredericksburg & Potomac	118	110	488	26 274 073	17 572 682	17 615 078	7 917 711	67.04	65.46	2 981 980	5 071 082	24 070 761	885 698 000	888 732 000	95.51	36 635 273	23.60	2.019	0.919	47.946
Regina	613	611	1 082	44 285 611	44 148 439	44 293 571	23 489 559	54.96	53.44	13 413 144	14 061 183	18 194 795	4 344 309 000	4 400 113 000	238.84	81 544 096	53.95	1.034	0.545	54.126
<b>Total - Rockmount Roads</b>	<b>8 183</b>	<b>8 088</b>	<b>16 495</b>	<b>441 383 039</b>	<b>429 119 784</b>	<b>440 721 377</b>	<b>287 534 400</b>	<b>64.64</b>	<b>61.80</b>	<b>123 159 179</b>	<b>148 843 454</b>	<b>235 174 757</b>	<b>60 722 884 000</b>	<b>61 914 478 000</b>	<b>274.83</b>	<b>1 306 283 685</b>	<b>47.18</b>	<b>1.041</b>	<b>0.641</b>	<b>48.161</b>
<b>OTHER EASTERN DISTRICT RAILROADS:</b>																				
Albany, Canton & Youngstown	171	171	289	6 000 067	6 000 067	4 271 478	4 271 478	71.19	71.19	745 949	745 949	3 290 439	330 380 000	331 498 000	101.02	9 147 619	36.24	1.816	1.293	45.592
Ann Arbor	292	292	409	9 123 481	9 123 481	7 434 273	7 434 273	79.74	79.74	1 006 147	1 006 147	2 779 881	476 764 000	476 764 000	194.22	19 441 134	28.91	1.727	1.177	53.848
Fullerton & Ohio	6 167	6 061	11 730	432 061 417	398 763 679	350 435 944	290 225 095	81.20	72.78	38 948 776	71 533 894	115 389 880	28 709 421 000	29 181 933 000	249.02	744 975 504	38.05	1.389	1.011	51.992
Lawrence & Lake Erie	308	308	514	86 451 160	86 451 160	17 998 535	17 973 514	67.53	67.44	6 807 747	6 806 555	22 042 607	2 284 900 000	2 312 934 000	100.91	29 930 475	77.28	1.198	0.808	89.016
Lehigh & Hudson	15	15	60	1 994 500	1 994 500	1 476 647	1 476 647	74.12	80.12	1 165 407	1 165 407	3 737 195	42 250 000	42 296 000	19.35	1 042 157	59.76	1.092	2.651	164.610
Lehigh Valley	613	613	1 011	17 870 111	17 870 111	17 870 111	17 870 111	79.84	79.84	4 364 335	4 364 335	11 302 070	2 152 490 000	2 175 812 000	63.81	54 430 577	38.54	2.303	1.718	87.320
Orange & Southern Illinois	848	848	1 417	34 454 906	29 426 689	27 394 632	21 615 439	79.51	72.96	4 030 900	5 181 957	14 914 118	2 175 235 000	2 217 381 000	145.85	44 181 390	34.55	1.362	0.994	46.161
Chicago & Illinois Midland	130	130	234	7 687 429	7 687 429	5 217 953	5 215 276	67.84	67.89	1 027 079	1 025 203	8 199 572	344 412 000	348 445 000	43.59	7 099 840	51.90	2.108	1.431	108.205
Chicago, Indianapolis & Louisville	441	441	813	22 112 880	20 513 433	17 088 779	14 115 249	76.32	68.81	2 101 261	1 477 557	7 513 984	1 382 519 000	1 420 402 000	170.94	40 550 275	29.85	1.704	1.174	50.588
Chicago & Hudson	732	732	1 292	32 041 917	30 041 783	24 923 125	22 444 126	69.82	65.24	30 443 673	12 529 779	20 447 495	1 247 107 000	1 412 510 000	194.02	114 127 060	35.10	1.261	0.823	43.771
Colonial, Jacksonville & Western	443	443	1 297	21 000 067	21 000 067	10 745 600	11 447 835	55.30	77.90	2 438 550	7 051 113	13 035 035	4 179 884 000	4 254 089 000	181.45	151 401 085	28.10	1.441	1.279	85.296
Detroit & Mackinac	232	232	274	2 302 067	2 302 067	1 521 477	1 521 477	64.09	69.09	202 896	302 896	1 489 433	105 952 000	108 952 000	62.71	2 590 000	42.98	2.038	1.436	86.254
Detroit & Toledo Shore Line	90	90	171	8 175 580	8 175 580	4 574 541	4 574 541	54.63	54.63	1 124 931	1 124 931	7 261 039	330 047 000	330 478 000	45.45	8 857 616	37.31	2.538	1.864	94.558
Detroit, Toledo & Irons	464	464	687	21 029 177	21 029 177	13 302 613	13 302 613	63.23	63.23	6 435 348	6 435 348	8 271 992	800 701 000	826 429 000	94.77	25 470 000	32.45	2.438	1.661	82.404
Detroit, Toledo & Irons	214	214	1 050	20 402 793	20 402 793	10 235 169	10 235 169	60.44	60.44	6 071 892	6 071 892	40 301 698	1 179 131 000	1 181 395 000	34.22	12 219 924	42.00	1.655	2.218	153.014
East & West	1 245	1 245	1 536	161 441 643	148 482 065	138 044 122	127 657 557	79.31	72.31	13 551 887	14 551 887	35 041 819	9 120 405 000	9 458 729 000	279.90	385 619 089	26.53	1.593	1.153	58.505
Grand Trunk Western	292	292	509	61 649 647	54 988 137	47 524 544	40 398 913	71.32	71.34	4 68 6										



## REVENUES, EXPENSES, AND FREIGHT TRAFFIC

Class I Railroads of the Eastern District  
Calendar Year Ended December 31, 1955

EXHIBIT No. 3

EASTERN DISTRICT-1955

Operating expenses		Operating ratio		Net railway operating income		Revenue tons carried	Two-mile a		Average haul per revenue ton (miles)	Loaded freight car-miles	Net ton-mile	Per ton-mile		Per loaded car-mile		Freight revenue		Net operating income per mile of road		Net ton-miles	
Total	Freight proportion	Total	Pct.	Total	Freight proportion		Revenue	Revenue and non-revenue				Freight revenue (cents)	Freight expense (cents)	Freight revenue (cents)	Freight expense (cents)	Per mile of road	Per mile of all trackage	Total	Freight proportion	Per mile of road	Per mile of all trackage
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20		
819 773 636	87 381 086	79.44	73.31	81 915 490	81 756 837	3 479 955	470 593 000	481 872 000	135.37	17 283 628	27.08	2.468	1.953	72 432	53 178	823 063	534 597	85 009	86 307		
65 729 574	39 544 778	59.86	55.80	6 594 511	29 344 894	10 079 157	2 772 171 000	3 086 619 000	164.34	136 943 138	25.79	2.319	1.317	59 119	33 582	44 061	22 531	4 377	12 541		
2 678 227	2 380 947	88.99	90.30	2 121 442	2 030 488	1 011 705	117 080 000	119 197 000	115.73	4 426 975	27.06	2.061	1.861	54 830	49 513	34 062	9 623	Def 6 526	Def 1 667		
5 779 689	4 248 367	73.53	76.43	88 246	864 138	2 297 774	396 701 000	415 594 000	172.73	14 535 160	28.59	1.602	1.070	38 240	29 228	23 753	18 105	377	1 609		
2 732 144	2 090 080	76.49	86.43	997 088	481 947	2 197 738	164 984 000	161 460 000	67.16	6 492 882	26.87	1.609	1.255	35 594	31 135	25 964	11 281	Def 11 081	Def 5 155		
8 721 240	7 236 709	83.09	79.20	376 080	886 395	3 487 736	528 095 000	539 537 000	657.39	28 704 775	27.38	1.341	1.386	47 010	35 194	23 126	16 639	882	2 071		
17 341 763	14 551 031	83.92	84.13	2 280 601	4 990 119	9 117 968	905 944 000	916 448 000	173.80	32 427 975	27.83	2.066	1.686	67 898	44 297	23 670	17 594	3 434	5 295		
2 475 342	2 270 264	91.72	93.70	762 814	317 877	5 191 821	302 523 000	302 523 000	19.75	4 565 637	28.06	3.970	2.734	89 149	69 725	700 510	62 618	36 124	15 944		
127 036 086	59 779 252	46.98	65.34	5 732 119	19 987 848	27 723 294	3 499 341 000	3 535 896 000	151.75	341 700 241	24.59	2.460	1.739	64 117	42 114	52 539	26 152	3 340	11 448		
3 577 304	3 397 306	92.25	92.25	245 917	245 917	1 712 673	241 387 000	241 387 000	140.70	8 675 017	20.06	1.994	1.461	35 463	45 417	12 274	10 034	627	627		
248 814 001	144 762 395	58.26	64.51	17 235 080	49 051 912	67 643 791	9 390 291 000	9 513 489 000	138.25	167 713 438	25.71	2.402	1.950	61 035	39 340	36 114	20 905	7 772	7 942		
1 247 226	1 047 226	75.54	75.54	13 786	13 786	987 360	308 125 000	308 125 000	103.44	3 290 000	32.80	1.617	1.221	50 186	37 910	7 752	6 739	64	64		
258 841 431	233 994 778	68.87	68.86	68 909 097	80 891 225	121 712 784	35 435 511 000	36 027 745 000	289.94	770 118 371	44.44	1.439	0.646	47 435	30 375	22 344	15 983	13 477	16 034		
138 719 686	126 685 134	66.42	66.71	37 841 242	48 806 260	70 405 617	19 953 241 000	20 492 132 000	288.39	434 671 985	49.43	1.005	0.605	48 130	29 104	15 177	12 186	17 703	23 175		
17 431 478	7 787 712	67.06	65.06	2 981 988	5 071 082	24 076 761	885 686 000	888 792 000	95.51	16 435 273	23.60	2.459	0.919	47 946	21 612	199 251	36 009	25 271	44 101		
24 293 571	23 689 597	94.76	93.66	13 413 144	14 062 183	24 394 795	4 246 389 000	4 400 111 000	228.84	81 244 096	51.95	1.016	0.545	54 136	29 203	22 294	40 841	21 953	23 013		
440 721 377	387 534 000	87.70	81.40	123 159 179	144 843 454	235 176 737	60 732 884 000	61 914 478 000	274.43	1 206 283 685	47.18	1.041	0.541	48 141	29 667	77 784	37 683	35 051	18 403		
4 271 478	4 271 478	100.00	100.00	745 949	745 949	3 790 439	330 384 000	331 498 000	101.02	9 147 619	36.24	1.216	1.293	65 992	46 675	35 088	26 201	4 479	4 479		
1 434 273	1 434 273	100.00	100.00	1 006 147	1 006 147	2 779 881	476 764 000	476 764 000	194.22	19 441 134	28.91	1.727	1.177	108 048	78 339	31 930	22 794	3 446	3 446		
350 435 966	290 228 095	82.80	72.78	38 898 776	71 533 874	115 389 950	28 709 423 000	29 181 912 000	249.02	744 975 704	38.05	1.389	1.011	51 900	37 840	45 792	33 995	6 308	11 802		
17 908 333	17 973 514	94.81	97.46	6 007 747	4 826 535	22 042 607	2 284 700 000	2 312 934 000	100.93	29 930 475	77.28	1.198	0.808	89 016	60 751	128 091	51 834	32 730	32 820		
3 676 467	1 676 467	45.62	37.12	1 246 409	1 246 409	1 237 193	62 290 000	62 290 000	39.15	1 042 157	73.76	1.092	2.451	104 430	140 853	44 284	30 075	11 297	11 297		
27 396 632	21 635 439	78.94	72.94	4 300 980	5 181 957	14 984 110	2 175 265 000	2 217 383 000	145.35	64 181 390	34.55	1.362	0.994	46 141	31 479	34 134	18 122	4 644	5 970		
5 215 953	5 215 276	67.86	67.89	1 007 079	1 007 079	8 159 572	364 412 000	364 412 000	43.39	7 099 860	51.90	2.102	1.431	108 305	51 454	59 095	32 811	7 901	7 901		
17 008 779	14 115 247	76.12	68.81	2 261 091	3 477 571	7 033 984	1 202 519 000	1 230 402 000	170.94	40 550 275	29.85	1.794	1.134	50 580	30 909	40 181	25 232	1 884	6 846		
16 721 120	12 844 124	76.84	81.24	39 061 573	12 529 771	26 441 095	1 767 187 000	1 812 510 000	194.02	134 127 060	37.40	1.761	0.823	63 771	38 555	32 384	31 296	13 444	15 820		
70 795 636	53 087 834	74.99	74.99	2 108 450	1 051 111	23 015 025	4 179 886 000	4 254 095 000	181.45	157 681 085	38.10	1.341	1.779	49 276	35 300	71 208	29 986	7 732	7 732		
1 521 477	1 521 477	100.00	100.00	307 096	307 096	1 605 433	305 952 000	306 585 000	62.71	2 550 000	42.50	2.078	1.416	86 156	59 664	9 492	7 979	1 306	1 306		
4 794 343	4 794 343	100.00	100.00	1 134 031	1 134 031	7 361 039	330 047 000	330 047 000	45.45	8 057 616	37.11	2.518	1.386	90 590	51 449	167 512	48 980	22 499	22 499		
13 302 423	13 302 423	100.00	100.00	6 435 348	8 279 992	8 279 992	820 701 000	826 429 000	96.77	25 070 000	32.45	2.638	1.661	82 604	52 229	45 143	30 625	14 300	14 300		
10 585 160	10 585 160	100.00	100.00	4 913 823	4 913 823	40 300 640	1 179 111 000	1 181 195 000	34.22	32 939 924	42.00	1.455	2.218	153 014	92 872	73 171	44 284	29 127	29 127		
128 085 122	107 057 571	83.60	77.31	23 088 079	34 555 807	37 862 019	3 120 405 000	3 434 129 000	257.30	105 619 889	24.53	1.753	1.153	34 305	27 368	86 734	27 365	6 772	11 038		
47 554 564	40 376 912	84.50	71.12	4 689 284	7 936 406	17 595 429	3 081 342 000	3 062 778 000	170.18	105 764 941	28.39	1.905	1.159	53 304	38 178	59 441	26 181	4 926	8 326		
9 464 684	8 237 389	86.89	74.81	634 080	1 120 625	6 833 194	441 295 000	444 961 000	67.90	18 765 000	26.42	2.394	1.796	86 488	64 533	33 454	20 181	1 732	3 193		
2 186 816	2 186 816	100.00	100.00	892 234	294 709	3 599 288	230 248 000	231 011 000	70.40	8 798 100	26.53	1.364	0.871	36 010	24 875	33 002	19 557	3 075	3 075		
5 779 218	5 779 218	100.00	100.00	2 085 732	2 085 732	1 185 831	277 212 000	279 245 000	17.84	5 762 445	48.44	2.723	2.157	111 008	101 764	42 175	24 671	11 652	11 652		
31 805 176	27 108 022	85.24	78.46	8 244 374	12 599 219	21 595 273	4 051 313 000	4 071 601 000	173.62	127 430 345	31.09	1.379	1.281	50 200	37 440	55 938	25 436	7 159	11 362		
32 224 443	27 913 243	86.61	78.04	1 448 080	1 194 234	4 704 457	92 451 000	94 135 000	28.77	3 107 115	30.79	1.489	1.032	437 042	314 847	39 363	15 450	3 992	3 992		
3 266 193	3 266 193	100.00	100.00																		



[fol. 229]

EXHIBIT No. 5

ILLINOIS RIVER POINTS THROUGH WHICH CORN IS SHIPPED VIA BARGE AND BARGE RATES TO CHICAGO

NYC RR Stations with Grain Elevators	Approximate highway miles to River Point	(2) Location of competing River Elevators	(3) Barge rate to Chicago, Ill. Cents per cwt.	(1) Former rail rate to Kankakee, Ill. Cents per cwt.	Present rail rate to Kankakee, Ill. Cents per cwt.
			(A)	(B)	(C)
Union Hill	28	Morris, Ill.	4.25	14.5	5
Reddick	28	Morris, Ill.	4.25	14.5	5
Blair	25	Morris, Ill.	4.25	16.5	5
Dwight	19	Morris, Ill.	4.25	18.5	5
Sunbury	18	Morris, Ill.	4.25	18.5	5
Budd	17	Seneca, Ill.	4.5	19	5
Missal	19	Seneca, Ill.	4.5	19	5
Streator	15	Ottawa, Ill.	4.75	23	5
Mills	13	Ottawa, Ill.	4.75	23	5
Lostant	12	LaSalle, Ill.	5	23	5
Priscilla	11	LaSalle, Ill.	5	23	5
McNabb	10	Spring Valley, Ill.	5	23	5
Granville	4	Spring Valley, Ill.	5	23	5
Moronta	4	Spring Valley, Ill.	5	23	5

Rail Rates subject to Ex Parte 206.

- (A) Ex-barge grain has benefit of Chicago reshipping rate.
- (B) Obvious local rates too high to influence rail movement in conjunction with Kankakee reshipping rates (which are same as reshipping rates from Chicago).
- (C) Objective to permit involved stations benefit of Kankakee reshipping rates same as applies ex-barge from Chicago.
- (1) NYC RR Tariff 701-A, ICC No. 1169, Section 4.
- (2) These are the River Points to which shippers around the NYC RR stations listed in first column normally truck their Corn because of better price quotations account lower shipping costs via barge as compared to applicable rail rates to Kankakee, Ill.
- (3) Rates published in the following Barge Line Tariffs:
- (a) A.L. Meckling Barge Lines Inc., Tariff No. 1-B, ICC No. 3, min. wt. 500 net tons per barge (X)
  - (b) Marine Transit Company, Tariff No. 5-C, ICC No. 9, min. wt. 350 net tons per barge (X)
  - (c) Federal Barge Lines, Tariff No. 12-N, ICC No. 39, min. wt. 500 net tons per barge (X)
  - (d) Mississippi Valley Barge Line Co., Tariff 28-A, ICC No. 2, min. wt. 500 net tons per barge. Rates include full carrier liability as per item 10 of Tariff.
  - (e) John I. Hay, Tariff 10-D, MF ICC No. 3, min. wt. 350 net tons. Rates include insurance charges (per item 35).
  - (f) Blaske Lines, Inc., Tariff No. 5-D, ICC No. 10, Supplement No. 8, min. wt. 500 net tons per barge (X)
  - (X) Rates do not include insurance except as otherwise stated.

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[fol. 230]

## EXHIBIT No. 6

## Supplement 52 to Tariff 245-H

## EXPLANATION OF NOTES

☐ Note 20 cancels Note 20, page 8 of Supplement 44.

**APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.**

(a) Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point. Rates also apply on through billed shipments not stopped in transit at re-shipping points subject to this application.

(b) Provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the rate from the re-shipping point applicable on a shipment originating thereat to final destination, the difference necessary to protect such rate from the re-shipping point to be added to the re-shipping rate therefrom. (See Exception below.)

(c) In no case shall the combination through rate to and from the re-shipping point via rail be less than the single factor through commodity rate from original shipping point to final destination named herein, which shall be the minimum through rate, the difference necessary to protect such minimum through rate shall be added to the reshipping rate from the reshipping point. The provisions of Paragraph (e) will not apply in connection with application of Item 278 of tariff, as amended.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

Number in square illegible.

These rates are applicable on shipments which arrive at Chicago, Ill., by River or Canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

The Ex-River or Ex-Canal Grain and (or) Grain Products rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Ill., via river or canal, also on Grain Products milled from Grain which arrive at Chicago, Ill., via river or canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Exception—The provisions of paragraph (b) as to the application of the rate on shipments originating at the re-shipping point as minima will not apply in connection with shipments moving to Chicago, Ill., via River or Canal, nor on shipments of Malt and Malt Sprouts, C. L., originating at Jefferson Junction, Wis.





## EXHIBIT No. 7

Item 279 (New).

## EXCEPTION TO APPLICATION OF RATES ON CORN AND PRODUCTS THEREOF

Rates named in tariff, as amended, on Grain and Grain Products from:

Station Number	STATION	Station Number	STATION	Station Number	STATION	Station Number	STATION
5000 to 5220	NYC(W) West Kankakee, Ill. to Moravia, Ill.						

will NOT apply on carload shipments of Corn and the following products produced from Corn:

Brewers' Flakes (not made from starch),  
Brewers' Meal (not made from starch).

Corn Bran,

Corn Chop,

Corn Dust,

Corn Feed (ground, ~~not~~ the product of starch or glucose factories),

Corn Flour,

Corn Meal,

Corn Malt,

Corn Malt Sprouts,

Corn Oil Cake (ground or unground),

Corn Oil Meal,

Corn Screenings (whole or ground),

Corn Shrivings,

Cracked Corn,

when routed via Kankakee, Ill. and milled in transit. Combination rates will apply. (D/A C1301-323.)

Feed, animal or poultry, prepared,

Feed, corn cereal offal (not cereal food preparations and not for human consumption),

Feed, flaked corn, toasted or not toasted (not a cereal food preparation and not for human consumption),

Gluten Feed,

Gluten Feed, sweetened,

Gluten Meal,

Grits (not made from starch),

Ground Corn,

Horsing,

Huminy Feed,

Hulled Corn,

Meal, sweet grain, dried, without or with not exceeding one per cent (1%) of Vitamin A added.

For explanation of reference marks, see last page of this supplement.



[fol. 232]

BEFORE THE INTERSTATE COMMERCE COMMISSION  
AMENDMENT TO FOURTH SECTION APPLICATION BY TRAFFIC  
EXECUTIVE ASSOCIATION—EASTERN RAILROADS—Filed July  
12, 1957

Commission's No. 33955

July 11, 1957

E. R. No. 2386

File: C1301-383

To the Interstate Commerce Commission  
Washington 25, D. C.

O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads, for and on behalf of carriers parties to Fourth Section Application No. 33955 hereby amends said application to the extent and for the reasons shown below:

## I

Amend the first full paragraphs on pages 6 and 7 of the application by changing reference therein to applications and orders, as follows:

*Now reads:*

"... Fourth Section Application No. 23982 (277 ICC 75), Fourth Section Order No. 16365, (Temporary)."

*Change to read:*

"... Fourth Section Application No. 32292, Fourth Section Order No. 18407."

In connection with Exhibit No. 7 to the application, it is desired to state for the record, that while West Kankakee, Ill. Index 8090 on the NYC RR(W), was originally shown therein, same will be eliminated as the 5½ cent proportional rate does not apply from this point and in lieu thereof Van's Siding, Ill. will be substituted. Agent Hinsch has been instructed to amend Item 279 of his Tariff No. 245-H, I.C.C. No. 4403 accordingly, at the earliest possible date.

This application is being amended due to the inadvertent showing of erroneous Fourth Section Application and Order references, indicated above by the substitution of correct [fol. 233] reference in lieu thereof. Also to explain the elimination of West Kankakee, Ill. and substitution of Van's Siding, Ill. in lieu thereof in Item 279 (Exhibit No. 7) of Agent Hinsch's I.C.C. No. 4403.

Wherefore, your applicants respectfully pray that the relief sought in the application, as hereby amended, be [fol. 234] granted. All of which is

Respectfully submitted

O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads, Agent for Applicants,  
 One Park Avenue, New York 16, N. Y.

*Duly sworn to by O. E. Schultz, jurat omitted in printing.*

[fol. 235]

180403

AMENDMENT NO. 2 TO FOURTH SECTION APPLICATION BY  
 TRAFFIC EXECUTIVE ASSOCIATION—EASTERN RAILROADS—  
 Filed July 15, 1957

Commission's No. 33955

July 12, 1957

E. R. No. 2386

File: C1301-383

To the Interstate Commerce Commission  
 Washington 25, D. C.

O. E. Schultz, Vice-Chairman, Traffic Executive Association—Eastern Railroads, for and on behalf of carriers parties to Fourth Section Application No. 33955, hereby amends said application to the extent and for the reasons shown below:

# I

Amend application by eliminating the last paragraph on page 5 extending into page 6 and substitute therefore the following:

"Exhibit No. 6, attached hereto and made a part hereof, is a copy of Note 20, Supplement 52 to CTR Tariff 245-H, Agent H. R. Hinsch's ICC No. 4403, which provides for the application of reshipping or proportional rates from Chicago, Joliet, Kankakee, etc., to destinations east of the Buffalo-Pittsburgh line and that the local rate need not be protected as minima in connection with shipments moving to *Chicago via river or canal*. A similar provision is carried in Note 45 of Supplement No. 37 to CTR Tariff 535-C, Agent H. R. Hinsch's I.C.C. No. 4499, naming rates from Chicago, East Joliet, Kankakee, etc. to so-called Central Territory and Western Termini of Eastern Trunk Lines, which is attached and made a part hereof as Exhibit No. 6A, wherein local rate need not be protected as minima in connection with shipments arriving via Chicago, etc. via river or canal."

[fol. 236] Further amend the application by adding the following paragraph directly after paragraph quoted hereinabove.

"Exhibits Nos. 6B and 6C, attached and made a part hereof, are copies of Notes 20 and 45 of Supplement No. 93 to Agent Hinsch's Tariff I.C.C. No. 4403 and Supplement No. 41 to Agent Hinsch's Tariff I.C.C. No. 4499, respectively, show the changes in Exception to said notes, which became effective December 15, 1956 and provide that Kankakee, Ill. local rates need not be observed as minima on traffic from New York Central Railroad (W) stations herein involved."

Exhibit No. 6, referred to above was submitted with the original application while Exhibit Nos. 6A, 6B, and 6C are submitted with this amendment.

This amendment is being filed pursuant to telegram received from Secretary H. D. McCoy, dated July 11, 1957.

Wherefore, your applicants respectfully pray that the relief sought in the application, as amended, be granted.

[fol. 237] All of which is

Respectfully submitted

O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads, Agent for Applicants,  
One Park Avenue, New York 16, N. Y.

*Duly sworn to by O. E. Schultz, jurat omitted in printing.*

[fol. 238]

### EXHIBIT No. 6A

Supplement 37 to Tariff 535-C

### EXPLANATION OF NOTES

Note 45 Cancels Note 45 (Tariff)

#### APPLICATION OF RESHIPPIING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below, from which no single factor through commodity rates are in effect in connection with inbound carrier via the reshipping point from original shipping point to final destination; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to final destination nor less than the through joint rate in



effect on the commodity reforwarded from the reshipping point from origin point of the grain to final destination of the grain or grain products via any route; whichever may be the higher, the difference necessary to protect either of the above bases of rates as minimum to be added to the reshipping or proportional rate from the reshipping point. (See Exception.)

On shipments which arrive by River or Canal at Chicago, ♣ Pekin or ♣ Peoria, Ill. These rates are applicable as of the date shipments leave the point of origin as shown on the shipping directions surrendered at Chicago, ♣ Pekin or ♣ Peoria, Ill.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Exception.—The foregoing provisions as to the application of local rates or the rate from the origin point to final destination as minima will not apply on shipments arriving at Chicago, Pekin or Peoria, Ill., by River or Canal.

[fol. 239]

#### EXHIBIT No. 6B

#### Supplement 93 to Tariff 245-H

#### EXPLANATION OF NOTES

☐ Note 20 cancels Note 20, page 16 of Supplement 52.

**APPLICATION OF RE-SHIPPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.**

(a) Where reference is made to this Note, rates apply as re-shipping or proportional rates applicable on traffic reaching the re-shipping point via a rail or water transportation line that can furnish to the outbound carrier.

Number in square illegible.

freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shipping point. Rates also apply on through billed shipments not stopped in transit at re-shipping points subject to this application.

(b) Provided, that in no case shall the combination through rate to and from the re-shipping point via rail be less than the rate from the re-shipping point applicable on a shipment originating thereat to final destination, the difference necessary to protect such rate from the re-shipping point to be added to the re-shipping rate therefrom. (See Exception below.)

(c) In no case shall the combination through rate to and from the re-shipping point via rail be less than the single factor through commodity rate from original shipping point, to final destination named herein, which shall be the minimum through rate, the difference necessary to protect such minimum through rate shall be added to the reshipping rate from the reshipping point. The provisions of Paragraph (c) will not apply in connection with application of Items 278 and 279 of tariff, as amended.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

These rates are applicable on shipments which arrive at Chicago, Ill., by River or Canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

The Ex-River or Ex-Canal Grain and (or) Grain Products rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Ill., via river or canal, also on Grain Products milled from Grain which arrive at Chicago, Ill., via river or canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

**Exception.**—The provisions of paragraph (b) as to the application of the rate on shipments originating at the re-shipping point as minima will not apply in connection with shipments moving to Chicago, Ill., via River or Canal, nor on shipments of Malt and Malt Sprouts, C. L., originating at Jefferson Junction, Wis., nor on shipments of Corn and Corn Products, C. L., named in Item 279 of tariff, as amended, originating at NYC stations named in Item 279 of tariff, as amended.

[fol. 240]

### EXHIBIT No. 6C

#### Supplement 41 to Tariff 535-C

#### EXPLANATION OF NOTES

Note 45 Cancels Note 45 pages 3 and 4 of Supplement 38.

#### APPLICATION OF RESHIPING OR PROPORTIONAL RATES APPLICABLE ON TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS DESCRIBED BELOW

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshiping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below, from which no single factor through commodity rates are in effect in connection with inbound carrier via the reshipping point from original shipping point to final destination; provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to final destination nor less than the through joint rate in effect on

the commodity reforwarded from the reshipping point from origin point of the grain to final destination of the grain or grain products via any route, whichever may be the higher, the difference necessary to protect either of the above bases of rates as minimum to be added to the re-shipping or proportional rate from the reshipping point. (See Exception.)

On shipments which arrive by River or Canal at Chicago, Pekin or Peoria, Ill. These rates are applicable as of the date shipments leave the point of origin as shown on the shipping directions surrendered at Chicago, Pekin or Peoria, Ill.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Exception.—The foregoing provisions as to the application of local rates or the rate from the origin point to final destination as minima will not apply on shipments arriving at Chicago, Pekin or Peoria, Ill., by River or Canal, nor on shipments of corn or corn products as enumerated in B-6 arriving at Kankakee, Ill., by NYC from NYC Stations West Kankakee, Ill., to Moronts, Ill. (Station Numbers 8090 to 8220).

B-6. Proportional rate from Kankakee will apply on corn and on the following products in carloads without regard to the existence of single factor joint through rates from NYC stations, West Kankakee, Ill., to Moronts, Ill., inclusive and without observing such single factor through rates as minima. Combination rates using proportional or reshipping rate from Kankakee on corn and the following products are not subject to Kankakee local rate as minimum:

Brewers' Flakes (not made from starch),  
Brewers' Meal (not made from starch),



Corn Bran,  
Corn Chop,  
Corn Dust,  
Corn Feed (ground, not the product of  
starch or glucose factories),  
Corn Flour,  
Corn Meal,  
Corn Malt,  
Corn Malt Sprouts,  
Corn Oil Cake (ground or unground),  
Corn Oil Meal,  
Corn Screenings (whole or ground),  
Corn Skimmings,  
Cracked Corn,  
Feed, animal or poultry, prepared,  
Feed, corn cereal offal (not cereal food pre-  
parations and not for human consumption),  
Feed, flaked corn, toasted or not toasted (not  
a cereal food preparation and not for  
human consumption),  
Gluten Feed,  
Gluten Feed, sweetened,  
Gluten Meal,  
Grits (not made from starch),  
Ground Corn,  
Hominy,  
Hominy Feed,  
Hulled Corn,  
Mash, spent grain, dried, without or with not  
exceeding one per cent (1%) of Vitamin A  
added.

[fol. 241]

180256

## BEFORE THE INTERSTATE COMMERCE COMMISSION

PROTEST OF CARGILL, INCORPORATED OBJECTING TO THE GRANTING OF RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE INTERSTATE COMMERCE ACT AS SOUGHT BY TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS IN FOURTH SECTION APPLICATION—Filed July 15, 1957

Commission's No. 33955

E.R. No. 2386

Dated—New York, New York,  
June 28, 1957, File: C1301-383.

Comes now your protestant, Cargill, Incorporated, and respectfully states:

It is a corporation, organized and existing under the laws of the State of Delaware, with headquarters at 200 Grain Exchange, Minneapolis 15, Minnesota.

It has been and is now engaged in buying, selling, storing and otherwise handling and processing grain, soya beans and other commodities.

It owns and operates a grain elevator at Chicago, Illinois, having a capacity of approximately 18,000,000 Bushel, into which it draws grain and from which it re-ships grain by Railroad, Barge, Truck and Lake Steamer. Large quantities of grain have been and are being handled from the origin territory and re-shipped to the destination territory here involved and it has a vital interest in the disposition of Carriers Relief Petition.

[fol. 242] It is aware of and in sympathy with the desire of the Eastern Railroads, particularly The New York Central Railroad Company, in this instance, to establish rates to meet competition, but this laudable objective is lost in what we believe and allege to be an improper evaluation of the whole situation.

It desires to submit the following facts, upon which it relies in the request it now makes, that the afore-named petition of the Eastern Railroads, be denied.

## I.

The 5 cents per one hundred pound rate (5 $\frac{1}{2}$  cents including Ex-Parte 206 Increase) referred to in Relief Petition is not proper or necessary to meet barge competition, which allegedly inspired this rate and this ensuing application for Fourth Section relief. Since the rate itself is improper and unnecessary, relief from any provision of the Act to support or sustain such a rate, is improper and unnecessary.

The 5 cents rate referred to is not proper or necessary because no grain from the involved origin territory can move to or through Chicago, at such a rate or anywhere near such a rate. To illustrate we will take, for example, a point of origin along the line of The New York Central Railroad Company involved in the Relief Petition. Dwight, Illinois, is shown in Exhibits Number 4 and 5; it is a representative and important shipping point.

A producer of Corn in the neighborhood of Dwight, [fol. 243] Illinois, hauls his Corn into the elevator at that point. Practically all of the Corn is on the cob and it must be shelled at the country elevator.

We now have the Corn in the country elevator at Dwight, Illinois, and from here on the following charges are incurred, taking our destination to be New York, New York, which is used in Exhibit 1 of Relief Petition.

If the grain moves by truck to the river, Barge to Chicago, Illinois and Rail to New York, New York, the following charges apply:

## Via Kankakee, Illinois

Cents Per One  
Hundred Pounds

Truck, Dwight, Illinois to Morris, Illinois, 19 miles, per Relief Petition Exhibit 5 3 cents per Bushel or - - - 5.36

Elevation at Morris, Illinois (truck into barge) 1½ cents per Bushel or - - - 2.68

Barge rate, Morris, Illinois to Chicago, Illinois 4.25

Trimming and shoveling at Chicago, Illinois, ¾ cents per Bushel, plus elevation at Chicago, Illinois, 2¼ cents per Bushel—total handling at Chicago, Illinois—3 cents per Bushel or - - - 5.36

Proportional Rail Rate, Chicago, Illinois, to New York, New York—49½ cents per one hundred pounds, plus Ex-Parte 206 increase 51.5

Total Cost Via Chicago, Illinois 69.15

[fol. 244]

## Via Chicago, Illinois

Cents Per One  
Hundred Pounds

Rail Rate, Dwight, Illinois, to Kankakee, Illinois, applicable when milled into Corn Products—5 cents per one hundred pounds, plus Ex-Parte 206 increase. 5.5

Proportional rate, Kankakee, Illinois, to New York, New York—49½ cents per one hundred pounds, plus Ex-Parte 206 increase. 51.5

Total cost via Kankakee, Illinois 57.0

It will be observed that the total cost via Chicago, Illinois, is .1215 cents per one hundred pounds higher than via Kankakee, Illinois.

If the milling process takes place at Kankakee, Illinois, or at any other transit point enroute to New York, New York, there is another cost for unloading the Corn and loading the Corn Products but that cost is exactly the same whether the movement is via Kankakee or Chicago.



In reliance upon the foregoing statements we respectfully contend that the Eastern Carriers in their Relief Petition shall not be heard to say they are only meeting barge competition. It seems the Eastern Carriers are under the impression that somehow Corn moves free to the river landings and that there is some extraordinary way of getting Corn from Barges to Railroad cars at Chicago, Illinois, without expense. These handling costs are not included in the rate but they are just as much a part of the transportation cost as if they were included in the rate and then absorbed. All of the barge rates here involved apply from Port to Port and the loading and [fol. 245] unloading costs are in addition.

In order to reach any transit point where Corn may be milled, only one elevation is necessary when handled by railroad, but to reach the same transit point via barge, at least two elevations, and generally three, are necessary and these elevation charges must be regarded as part of the cost factors because the barge rates cannot be used without them.

## II.

The Relief Petition of Eastern Carriers, on Page 10, states that based on elevator capacity at origin stations the railroads can only hope to recover 6,000,000 Bushel annually while the barge movement into Chicago, Illinois, for the year 1955, approximated 14,887,000 Bushel. This estimate may be correct at this moment but with a rate adjustment such as envisioned in this Relief Petition there should be a rapid expansion of present elevator facilities. The above estimate of 6,000,000 Bushel is based on elevator capacity at origin but there is a sizeable and important amount of portable loading equipment being used in this territory to which no reference is made. We believe the amount of grain the Railroads could recover under the rates which would be available if the Relief sought was granted, would depend only on the number of empty cars the railroads could supply.

Further, if the Railroads can recover only 6,000,000 Bushel annually because of the limited elevator capacity,

as suggested on Page 10, then it is reasonable to deduce that if there was twice as much elevator capacity the Rail- [fol. 246] roads could divert 12,000,000 of the 14,887,000 Bushel. We believe this points out quite clearly that with a rate of  $5\frac{1}{2}$  cents per one hundred pounds to Kankakee, Illinois, the barges, with the substantial costs in addition to their rates, would only be a factor when lack of elevator space or lack of empty cars would force the grain to the river.

### III.

The rates which would be available if the Relief sought was granted would also have the effect of drawing grain off other lines. There are five north and south railroads crossing the line of The New York Central Railroad Company, in the involved origin territory. They are The Atchison, Topeka and Santa Fe Railway Company, Gulf, Mobile and Ohio Railroad Company, Wabash Railroad Company, Illinois Central Railroad Company and Chicago & Eastern Illinois Railroad Company. Corn from territory on these railroads is attracted to adjacent loading points on The New York Central Railroad Company, because of the  $5\frac{1}{2}$  cents per one hundred pound rate to Kankakee, Illinois. This disrupts and diverts the natural trend of movement from points on these other lines, all because of the rate of  $5\frac{1}{2}$  cents per one hundred pounds from these New York Central Railroad Company origins to Kankakee, Illinois, which is sought to be protected and validated by Fourth Section relief, under the guise of its necessity to meet barge competition.

### IV.

The restriction in this rate to apply only on Corn, milled in transit, is unlawful under Section 3 of the Act because it [fol. 247] gives undue preference to milled products and creates undue prejudice to the commodity from which the product is milled. Corn Products are higher in value than Corn.

For example, if a miller of Corn at any Eastern destination in the involved territory, purchased Corn from a New

York Central Railroad Company point in the involved origin territory, milled it at destination and sold the products locally, he would pay the Corn rate. He would be milling at destination, not in transit. A processor at some intermediate point could purchase Corn from the same origin, mill it into products at the intermediate point, and ship the milled product to the destination at which the first named processor was located; he would only pay the materially lower rate sought by this Relief Petition, applicable on Corn, milled in transit into Corn Products.

Taking Dwight, Illinois, as an origin, we show the following example:

Corn, Dwight, Illinois, to New York, New York, milled at destination and not milled in transit, 68 cents, subject to Ex Parte 206	71.5
---	------

Corn, Dwight, Illinois to Kankakee, Illinois, when milled into products, 5 cents, subject to Ex-Parte 206	5.5
---	-----

Kankakee, Illinois, to New York, New York, 49½ cents per one hundred pounds, subject to Ex-Parte 206	51.5
--	------

Total	57.0
-------	------

Preference given a transit operator milling in transit, over a transit operator milling at destination—	14.5
---	------

[fol. 248]

V.

Relief application seeks to legalize rates now published and effective to the Western Termini of Eastern Trunk Line Territory and East thereof, by an extension of that basis of rates to Central Territory. This would validate and perpetuate rates to the Western Termini of Eastern Trunk Line Territory and East thereof, which we allege to be unlawful under Sections 1, 3 and 4 of the Act and which rest upon the specious premise that all of this is necessary to meet barge competition.

## VI.

On page ten, line sixteen, Relief Petition refers to the Fourth Section departures as "theoretical". We respectfully urge that there is nothing theoretical about these Fourth Section violations, nor is there anything hypothetical or speculative about them. They exist in reality, or they do not exist at all.

## VII.

On page 1, Exhibit 1, of Relief Petition, Kankakee, Illinois, is shown as the (first higher rated intermediate origin) and via Route 1, the distance to New York, New York, is shown—907.8 miles. The local rate reference (2) is shown as 66 cents per one hundred pounds and the proportional rate reference (3) is shown as 49½ cents per one hundred pounds. Reference (3) is shown on Page 2, Exhibit 1 and the Explanation of that reference on Page 2 reads: "(3) Proportional rate beyond applying on Ex-Barge Traffic". There can be no application of Ex-Barge rates from Kankakee, Illinois, because it is not a point at which barges are unloaded. Further, Relief Petition, Exhibit 6, reproduces Note 20 to which the Chicago, Illinois, proportional rates are subject. Kankakee, Illinois, is shown in this Note because it too is subject to Note 20 but no reference anywhere in this Note is made as to Ex-Barge Grain re-shipped from Kankakee, Illinois. Note 20 (c) paragraphs three and five make reference to Ex-Barge grain, but only on shipments which arrive at Chicago, so reference (3), wherever it appears on Page 1, Exhibit 1, is in error. Kankakee, Illinois, can avail itself of the Proportional Rates applying from Chicago, Illinois, on Ex-Barge traffic, but only when the traffic moves via Chicago, Illinois, and that means the rates so used are subject to all the charges shown in our illustration on page 3 hereof. That is the precise reason the New York Central Railroad Company publish a rate of 6 cents per one hundred pounds (subject to Ex-Parte 206), in its tariff 701-A, I.C.C. 1169 from Chicago, Illinois, to Kankakee, Illinois, as shown in the quotation near the top of Page 5 of Relief Petition.



For the foregoing reasons, your protestant respectfully repeats its requests that the Interstate Commerce Commission deny the request of the Traffic Executive Association-Eastern Railroads for the Fourth Section relief sought in its Fourth Section application hereinbefore referred to.

We also respectfully request the Commission to order the cancellation of all rates, provisions and applications in the following described tariffs, because they have been illegally in effect since their establishment, December 15, 1956 and they are now illegally in effect because they are in violation of Section 4 of the Act.

[fol. 250] (a) All rates on Corn to Kankakee, Illinois, originally established in Section 4, Page 3, Supplement 114, the New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169.

(b) All rates on Corn to Kankakee, Illinois, published in Section 4, Page 40, Supplement 122, the New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169, which is a re-issue of the rates covered by paragraph (a).

(c) All rates on Corn to Kankakee, Illinois, published in Section 4, Page 2, Supplement 126, The New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169, which is in part a re-issue of the rates covered by paragraph (a) and in part an extension of the destination territory to which the rates originally published will apply. This change in Supplement 126 is published to become effective July 30, 1957 and a request for suspension of this publication is being prepared and will be in the hands of the Commission within the time prescribed by the Rules of Practice.

(d) Item 279 (new) and the concluding part of the Exception in Note 20, which refers to Item 279, all on Page 2, Supplement 84, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403, which originally became effective December 15, 1956.

(e) Item 279 on Page 17 and the concluding part of the Exception in Note 20, which refers to Item 279 on Page 11, both in Supplement 93, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403, which is a re-issue of the provisions of paragraph (d).

[fol. 251] (f) Paragraph B-6 of Exceptions to Note 45, shown on Page 4, Supplement 38, Central Territory Railroads Tariff Bureau Freight Tariff 535-C, I.C.C. 4499, originally effective December 15, 1956 and still in effect.

The fact that carriers are now filing a request for relief from the provisions of Section 4 of the Act, is evidence and an admission that the rates, applications and provisions already in the tariffs, as referred to in paragraphs (a) through (f), are in violation of that Section. Since the Commission has the power and authority under Section 15 of the Act to order the carriers to cease and desist from these violations of the Fourth Section of the Act, we again respectfully request the Commission to exercise those powers and summarily order the carriers to cancel all rates, applications and provisions enumerated in paragraphs (a) through (f) hereof.

In conclusion your protestant desires to respectfully repeat it does not wish to deter any railroad, or any other carrier, from meeting its competition, wherever it may be found. We are always interested in purchasing transportation at the lowest cost. However, in the instant case the efforts of the Railroads, perhaps unwittingly, will tend to destroy, rather than meet, the Barge competition with which they are confronted and the inherent rights of these various Barge Lines serving Chicago, Illinois, are denied due regard and protection as guaranteed under the National Transportation Policy.

Respectfully submitted,

Bernard A. Springrose, General Traffic Manager,  
Registered Practitioner, 200 Grain Exchange  
Building, Minneapolis 15, Minnesota.

July 11, 1957

[fol. 252] Certificate of service (omitted in printing).

## BEFORE THE INTERSTATE COMMERCE COMMISSION.

AMENDMENT TO PROTEST OF CARGILL, INCORPORATED OBJECTING TO THE GRANTING OF RELIEF FROM THE PROVISIONS OF THE FOURTH SECTION OF THE INTERSTATE COMMERCE ACT AS SOUGHT BY TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS IN FOURTH SECTION APPLICATION—Filed July 16, 1957

Commission's No. 33955

E.R. No. 2386

Dated—New York, New York,  
June 28, 1957, File: C1301-383.

Comes now your Protestant, Cargill, Incorporated, respectfully requesting the Commission to refer to its Protest of July 11, 1957 above referred to.

Page 3, lines 1 and 2 read in part as follows:

"Practically all of the Corn is on the cob and it must be shelled at the country elevator".

This should read:

"Practically all of the Corn is shelled on the farm and only a small part must be shelled at the country elevator".

Your Protestant prays the Commission accept and consider its protest, with this amendment.

Respectfully submitted,

Bernard A. Springrose, General Traffic Manager,  
Registered Practitioner, 200 Grain Exchange,  
Minneapolis 15, Minnesota.

July 15, 1957

[fol. 254] Certificate of service (omitted in printing).

[fol. 255]

181262

PETITION OF BOARD OF TRADE OF THE CITY OF CHICAGO OF  
PROTEST AGAINST F. S. A. 33955—Filed July 17, 1957

Chicago, Illinois  
July 16, 1957

Mr. Harold D. McCoy, Secretary  
Interstate Commerce Commission  
Washington 25, D. C.

Dear Sir:

The Board of Trade of the City of Chicago respectfully protests the following Fourth Section Application and hereby petitions the Interstate Commerce Commission to enter upon an investigation inquiring into the lawfulness thereof and to hold a public hearing in order that members of the shipping public and other interested parties may be heard. The Fourth Section Application referred to is designated as:

*Fourth Section Application I.C.C. 33955*, issued by O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads under File E. R. 2386 dated June 28, 1957 as publicized in the Federal Register Saturday, July 6, 1957.

In support of its protest, this petitioner respectfully states:

I

This petition is filed in behalf of the Board of Trade of the City of Chicago, a corporation existing by and under the laws of the State of Illinois, maintaining a grain exchange in that city where its members deal in various commodities including Grain, Grain Products, By-Products of Grain and Related Articles to which this statement is [fol. 256] directed. Its members move these commodities into and out of the market via barge and rail and are vitally interested in rates and charges affecting their traffic from origins in the State of Illinois and adjacent ter-



ritory when destined to points in the Central Freight Association Territory, Western Termini of Eastern Trunk Lines and East thereof.

## II

### *General Statement*

Fourth Section Application, I.C.C. No. 33955 dated June 28, 1957 was issued by O. E. Schultz, Vice-Chairman Traffic Executive Association-Eastern Railroads for and on behalf of carriers parties to Agent H. R. Hinsch's Tariff No. 245-H, I.C.C. No. 4403 and No. 535-C, I.C.C. No. 4499 in addition to New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169. It seeks authority to maintain rates without observing the long-and-short-haul provision of section 4 (1) of the Interstate Commerce Act.

Some of the rates on which this delinquent relief is sought were initially published in Supplement 114 to NYC Tariff 701-A, I.C.C. No. 1169, with corresponding amendments in Supplement 84 to Agent H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403 and Supplement 38 to Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499, on traffic destined to the Western Termini of Eastern Trunk Line Territory and East thereof, *all effective December 15, 1956*. It timely seeks relief in connection with traffic to Central Territory, other than Western Termini points, scheduled to become effective June 30, 1957 in Supplement 126 to NYC Tariff 701-A, I.C.C. No. 1169, and applying in connection with rates published in Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499.

[fol. 257] This petitioner has today filed, concurrently with this protest a petition for investigation and suspension of Supplement 126 to New York Central Tariff 701-A, I.C.C. No. 1169, for reasons stated therein, and will hereinafter consider the above entitled Fourth Section Application 33955 and its effect on the origin territory in Illinois, and adjacent territory, to the entire Central Freight Association Territory, Western Termini points, and points in the Trunk Line and New England Territory. For the purposes of this protest, this petitioner will consider the entire destination territory as a whole *assuming, for the sake of convenience*, that rates in Agent H. R. Hinsch's Tariff 535-C,

I.C.C. No. 4499 are already in effect. This is not to be construed in any manner as an acceptance of the rates scheduled to become effective July 30, 1957, in Supplement No. 126 to NYC Tariff 701-A, I.C.C. No. 1169, but seek to disregard, in point of time, the effectiveness and we still firmly adhere to all contentions enumerated in our petition of suspension filed concurrently herewith. Before inquiring into the individual aspects of this protested Fourth Section Application, insofar as its unlawfulness is concerned, we consider it in general terms. The predominant theme throughout is the New York Central's desire to meet barge competition and refers in over twenty instances to *barge competition on corn*. While corn is mentioned constantly throughout the entire application, we call the Commission's attention to the fact that *the rates involved in this Fourth Section Application only apply on Corn Products*. As will be hereinafter shown, by tariff reference, these competitive rates do not apply on Whole Corn, in its natural state, but [fol. 258] are limited to apply only on Corn Products reaching final transit destination. Corn must be manufactured or processed in transit in order to gain their use, thereby limiting the application to a select group of commodities. When the New York Central refers to barge competition, they have only undertaken to meet a small segment thereof in behalf of a select class of shippers under which gross unjust discrimination arise.

We wish to state at the outset that we believe rail carriers are entitled to meet competition *provided it is done in a lawful manner*, not in contravention to the Transportation Policy or the Interstate Commerce Act. The rates here protested violate several sections of the Act, as will hereinafter be shown. We further agree that if competition is met in a lawful manner, to be effective there must be relief from the application of the through rates from origin to the entire Central and Eastern Territory; relief from the flat-rate provisions applicable at the proportional or re-shipping points; and adequate Fourth Section Relief. This is based on the premise that rates, so filed to meet the competition, are in full compliance with the Interstate Commerce Act.

It will be noted throughout this entire application that the New York Central seeks to originate traffic on their

Kankakee Belt Line between Moronts, Illinois and Van's Siding, Illinois and move same through Kankakee direct to the East on their own railroad, per exhibit 1 attached thereto. It is obvious in paragraph 2, page 3, that they only seek relief from the flat rate at *Kankakee* and that nowhere in the application is there any mention of similar relief sought via the Chicago gateway. The showing in [fol. 259] exhibit 1 relative to typical fourth section departures is meager indeed. The departures that arise in a four-state area will be commented upon later.

On page five of the application, reference is made to meeting competition moving through the Chicago gateway on Barge-Rail traffic to the East by publishing rates to and from Kankakee to meet that competitive situation. *Chicago is the barge unloading port which is also served by the New York Central on which they have refused to meet competition where it actually exists, thereby discriminating directly against the very interchange point on which their entire proposition is based.* As stated, we are wholeheartedly in favor of railroads endeavoring to meet competition on a lawful basis, but when they *discriminate against certain classes of traffic, gateways or markets, or manufacturers or processors*, then the Interstate Commerce Commission must investigate and restrain them.

Page 7 of the application states that it was concluded that no additional relief was necessary and publication was accordingly made. The interpretation on which they relied is erroneous, probably rendered under an incomplete statement of the facts. Thousands of cars have moved on the rates that became effective December 15, 1956, on which there has not been proper Fourth Section Relief and those rates should be cancelled and be inoperative pending the outcome of this proceeding. It is important that members of the shipping public are not further injured by these unlawful rates. To prevent irreparable damage, we believe the Interstate Commerce Commission should, under powers [fol. 260] provided in section 15 of the Interstate Commerce Act, order immediate cancellation of the December 15, 1956 rates, on one day's notice, until this entire matter has been settled to its satisfaction. There is no such thing as a "technical fourth section departure". *It either is or it isn't.*



On page 10 in paragraph 2, it is stated "Through the continuation and publication of the 51½¢ rate to Kankakee as a proportional rate *applicable only on corn milled in transit*, the involved railroad, the New York Central, is able to recapture a share of the corn movement." *For the first time in the entire application it is specifically stated exactly what the New York Central is driving at. Namely, they want to recapture a share of the Corn movement only to the extent that it will apply on Corn ultimately "milled in transit". They should be called upon to justify why Corn Products is the only thing that is subject to barge competition and why they have purposely excluded from the application of the competitive rates Whole Corn in its natural state.*

While page 10 contains a prayer for the Commission to expedite the handling of this application, we respectfully urge that this untenable situation be investigated in its entirety and require the New York Central to justify each and every point in question.

### III

#### *Chronology of 5¢ N.Y.C. Rate*

In order that the Commission may have a complete understanding of the background of the competitive rates involved in Fourth Section Application No. 33955, we have [fol. 261]. reproduced in Appendix A, attached hereto, the entire handling through various Rate Committees up to the time of publishing the original rates on December 15, 1956. Later pages therein will show the amendment sought to become effective July 30, 1957, together with some of the things that transpired between December 15, 1956 and July 30, 1957.

The first two sheets in Appendix A are maps showing the line of the New York Central in order that its general location will be known in light of the statements hereinafter made. Map "A" is a section of Northeastern Illinois showing the Kankakee Belt Line of the New York Central from Moronts, Illinois to Kankakee, Illinois, together with the water route of the Illinois Waterways on which the alleged

competition exists. Map "B" is an enlarged section of the same map emphasizing the line of the New York Central between Moronts and Kankakee in order that close examination can be given to the individual origins and cross-country stations on other railroads.

Pages 1 to 9, inclusive, of Appendix "A" show the chronology of committee handling prior publication on December 15, 1956, and to which we now turn our attention.

Page 1 is a copy of I.R.C. Application 563-195, dated June 18, 1956, wherein the New York Central sought a proposed rate of 5¢ per 100 pounds (X-196) on Corn from stations on their Kankakee Belt Line to Kankakee, Illinois containing provision that the rates were to be "subject to milling in transit" and appropriate tariff amendment sought to provide for non-application of existing through rates [fol. 262] where combination rates would be lower. The application, on the face of it, applies on *Corn, carloads*, and subject to milling-in-transit. Throughout the years, most competitive rates have been published on *whole grain* to meet barge competition and were not limited to grain milled in transit because carriers maintained that water competition was only on the whole grain. If a carrier wanted to depart from that general position and wanted to also include Corn Products it would publish an application to apply on *Corn, earload*, subject to milling in transit exactly the same as appears here. As will hereinafter be shown, the rates actually published though, only applied on Corn Products. Therefore, the commodity description at the head of the application is misleading. Construed literally, if rates were only to apply on Corn Products, the generic commodity description would so read. We call attention to "Fourth Section relief to be obtained". *There was no question in the mind of the proponent but that Fourth Section Relief was necessary.* To depart from that original contention, there must be some compelling reason. On page 2 it will be noted in the second paragraph, that the milled products involved were only five in number, namely, corn grits, corn meal, corn flour, hominy feed, and brewers flakes. Apparently, the products of an individual shipper were desired and not designed to meet "*like with like*" as

alleged at the bottom of page 9 in the Application. *Throughout this entire proposal, reference is made time and again to the barge competition on Whole Corn, yet it seemingly was proposed to apply on only five selected Products of Corn.* It would appear that in order to get a ridiculously low level of rates on five selected commodities for an individual shipper, the proponent carrier used as an excuse existing barge competition. It is further apparent that in considering the competitive level, the proponent carrier looked only to barge rate from the river landing to Chicago and gave no consideration to other costs incidental to a truck-barge-rail movement from origin to eastern destinations.

Page 3 shows that I.R.C. Application 503-195 was not originally recommended; page 4 that I.R.C. Application 503-195 was listed for review by the Illinois Freight Association Traffic Executive Committee under Emergency Docket 4826; and page 5 that consideration by the Executive Committee approved the docket as recommended.

Page 6 is Determination Advice E. C. 596, showing that the 5¢ rate was recommended by the Traffic Executive Committee. It will be noted thereon that "*Fourth Section Relief to be obtained by the NYC(C) RR*".

Page 7 shows the circularization of Determination Advice E. C. 596 to the Western Trunk Line Committee, indicating that unless objections were recorded by September 7, 1956, that the members thereof would be considered as concurring therein.

Page 8 is the Determination Advice No. C-1301-383 of the General Freight Traffic Committee-Eastern Railroads dated October 31st, wherein the Eastern Railroads concurred in the application of 5¢ combination to Western Termini of Eastern Trunk Lines and east thereof. Page 9 is a memorandum which came to us attached to the Eastern Railroads advice No. C-1301-383 indicating the basis on which the New York Central concluded that no additional [fol. 264] Fourth Section Relief was necessary. It will be noted that this was the result of a telephone conversation made with Mr. Robert Newell, Chairman of the Fourth Section Board and upon which the New York Central placed



their entire confidence abandoning their original position that Fourth Section Relief was necessary. In our opinion, Mr. Robert Newell misunderstood the facts or did not receive the entire factual picture in coming to his conclusion. As will be noted on page 8, no reference to Fourth Section Relief was made on the Determination Advice and they proceeded with publication thereon. Concluding with page 9 of the Appendix, we leave the preliminary handling of this matter through the Committees and turn to the actual tariff publication of the competitive rates which became effective December 15, 1956.

Pages 10 to 12, inclusive, is a complete showing of Supplement 114 to New York Central Tariff 701-A which became effective December 15, 1956. Page 3 shows publication of a 5¢ (X-196) rate from the enumerated New York Central origins to Kankakee subject to route 1, the New York Central direct, also subject to circle references 399 and 400. An examination of page 11 shows page 2 of the tariff wherein circle 399 indicates that the 5¢ rate is an X-196-A rate in effect at the time of the publication. Circle 400 shows that the rates apply on Corn and Corn Products when *milled in transit* and only as the proportional rate to Kankakee, Illinois on traffic destined to the Western Termini of Eastern Trunk Lines and east there thereof, and subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission. At this point, we note that the generic heading of the rates on page 3 of [fol. 265] the tariff read: "Corn, as per grain list in section 1 of Agent H. R. Hinsch's Freight Tariff No. 600-H, I.C.C. No. 4644," while circle reference 400 on page 2 applies only on Corn and Corn Products "when milled-in-transit". Therefore, we have a "gathering rate" tariff by a western carrier publishing a component part of a combination through-joint rate wherein the first rate factor is limited in its application to certain traffic, thereby projecting the restriction upon proportional tariffs used in connection with the 5¢ rate. As will be explained later, the eastern tariffs naming the proportional rates from Kankakee to the Western Termini and points East thereof, have been for many years without limitation or restriction. It is an unlawful projec-

tion of an individual railroad's control over all of the eastern proportional rates. Therefore, there are three basic things wrong with Supplement 114, namely, the 5¢ rate is too low, there is a discrimination against the use of those rates on Whole Corn, and an unlawful exercise of control over the destination proportionals under a "rate-break" system of rates.

Pages 13 to 15, inclusive, show amendments made to CTR Tariff 535-C, I.C.C. No. 4499, effective December 15, 1956, to take care of the eastern factor operative in connection with the 5¢ gathering rate. On page 3 of the tariff, it will be noted by the underscored language, unless otherwise provided, that the proportional rates will apply only on traffic originating at points from which no single-factor through commodity rates are in effect, but not less than the local rate from the re-shipping point to final destination. We agree relief from these provisions are necessary in [fol. 266] connection with the establishment of a combination of low competitive rates to destination territory, assuming of course, that competitive factors are in full compliance with the law.

Page 4 contains a paragraph B-6, which provides that proportional rates from Kankakee will apply on *Corn and Corn Products* without regard to the existence of the single-factor joint through rate from stations West Kankakee to Moronts, Illinois, and are not subject to the Kankakee local rate as a minimum. It will be noted that there is no restriction in note B-6 requiring the commodity to be "milled-in-transit". C.T.R. Tariff 535-C thus continues in effect with no limitation or restriction on its proportional rates on Grain and Grain Products as a separate established proportional rate factor. At this point, we note how the restriction "when milled-in-transit" contained in New York Central Tariff 701-A in Supplement 114 thereto, places a limitation upon the proportional rates in C.T.R. 535-C without the latter tariff carrying, within its covers, the same provisions. It might be stated at this point that *Western Termini points* are published in C.T.R. Tariff 535-C and, therefore, this tariff was involved in the original application. The balance of the Central Territory was not included

in Supplement 114 to New York Central Tariff 701-A and, therefore, the use of CTR Tariff 535-C was initially limited to the Western Termini points as final points of destination.

Pages 16 and 17 show the title page and excerpt from Supplement 84 to C.T.R. Tariff 245-H, I.C.C. No. 4403, effective concurrently with New York Central Tariff 701-A [fol. 267] on December 15, 1956. Page 2 thereof shows in paragraph (b) of Note 20 that the flat rate from the re-shipping point to final destination must be protected. Paragraph (c) requires that single-factor through commodity rate must be observed as a minimum if it is higher than a combination that would arise under the tariff. Relief from both minimum rate provisions have been taken care of by an exception in connection with item 279 which shows at the bottom of the page as a new item, New York Central (W) stations West Kankakee, Illinois to Moronts, Illinois, inclusive, on *Corn and Corn Products*, "when milled-in-transit". At this point we see how tariff C.T.R. 245-H, publishing the proportional rate from Kankakee to the East, has the restriction "when milled-in-transit" published within its covers, thereby carrying the limitation therein *and not controlled by extraneous restrictions* by the New York Central in Tariff 701-A. This has resulted in a preferential treatment to Corn Products on basis lower than on Whole Corn, in its natural state, which is unjustly discriminatory in violation of section 3 of the Interstate Commerce Act. Again, we reiterate, an exception to the flat rate from the re-shipping or proportional rate point to final destination and relief from the through rate is necessary in order to meet competition, *but to limit relief from those two minimum rate provisions on a select class of traffic is in violation of the law.*

Page 18 is the title page to Supplement 120 to New York Central 701-A and page 19 of page 2 of that supplement, showing that effective March 24, 1957, the New York Central sought to restrict routes in their gathering rate tariff so the 5¢ proportional rate from Kankakee, Illinois to destinations in Eastern Territory would not route via Chicago. Therefore, they not only exercised control over



the eastern proportional rates insofar as limiting the movements to "when milled-in-transit", but in Supplement 120 additionally *sought to control the routing* via which those eastern proportional rates could apply. Page 20 is the title page to supplement 121 and page 21 is page 2 of the supplement, wherein effective March 24, 1957, the New York Central removed the restriction against the Chicago market contained in Supplement 120 and effective the same date as Supplement 120 was to become operative.

Considering now that the 5¢ rate which originally became effective December 15, 1956, has been in effect for several months, the New York Central now seeks to expand the destination territory to include the Central Territory. Section 5a of the Interstate Commerce Act has not been complied with. The first advice that we had of any consideration of expanding the territory into the Central Territory was through the "grapevine" on May 22, 1957, when we wired Mr. E. V. Hill of the Central Territory Railroads as follows:

"Regarding Subject 20 May 23rd docket under your File G-4354 corn and corn products via Kankakee to Central Territory and origin fourth section relief, we request no action be taken and public hearing be permitted to allow grain trade to express its views with regard to this subject matter."

In other words, we heard about the matter one day before a hearing was held in Chicago by the Central Territory [fol. 269] Railroads and were denied the opportunity of presenting our views in accordance with the rules of procedure applicable to the eastern railroads. This matter was never docketed before the Illinois Freight Association as was the original proposal, I. R. C. D.-503-195, as shown on page 1 in Appendix A, nor before the Western Trunk Line Committee as was done in the original proposal under WTL Application 21-4388, shown on page 7 therein. Further, the matter was not publicly docketed before the eastern railroads and only after its approval were we able to get from a friendly carrier a copy of the Determination Advice shown on page 22. This, however, was received days after

the tariffs were received. All of this procedure was in violation of section 5a of the Interstate Commerce Act and at no time did the shipping public or other interested parties have an opportunity to appear before the carriers in a Committee action and present their views in the matter.

Pages 23 and 24 are reproductions of Supplement 126 to New York Central Tariff 701-A, separately protested here and petition filed for suspension thereof for the reasons stated therein. Page 23 is the title page, and page 24 a reproduction of page 2 underscoring "Central Territory". This is an expansion of the original 5¢ combination basis to apply to the Central Territory in addition to the Western Termini of Eastern Trunk Lines and points east thereof. As previously stated, we are for the purposes of this showing, making no special point of the addition of the Central Territory standing alone, since that matter is considered in [fol. 270] full in our petition of suspension concurrently filed with this protest.

We have here taken the entire history of the New York Central competitive rate situation from its inception on June 18, 1956 down to the most recent addition shown in Supplement 126 to NYC Tariff 701-A now scheduled to become effective July 30, 1957, for the Commission's examination.

#### IV

##### *Unfair and Destructive Competitive Practices*

The National Transportation Policy states in part, "It is hereby declared to be the National Transportation Policy of Congress . . . to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences or advantage, or unfair or destructive competitive practices; . . .".

The existing rates on which Fourth Section Relief is here sought does this very thing. The establishment of a 5½¢ (X-206) rate from Moronts, Illinois to Kankakee, Illinois for 83½ miles requires close examination. The New York Central maintains that 5½¢ is necessary to meet barge competition which they claim *exists in equal effect* throughout the entire 83½ miles. This is not true. We have only

had an opportunity to examine the competitive situation in Illinois to a limited extent and find that the establishment of a  $5\frac{1}{2}\text{¢}$  rate by the New York Central has amounted to an *"unfair and destructive competitive practice"*. Because of [fol. 271] the difficulty in obtaining this evidence, we are not able at this moment to show the complete competitive situation to the Commission. We respectfully request a public hearing at which time the Chicago Board of Trade will undertake to show in a comprehensive manner, the competitive situation along the New York Central and the adjacent territory. A competitive railroad like the Gulf, Mobile and Ohio Railroad, for example, serving Dwight, Illinois, is confronted with one thing when it desires to meet barge competition but *something altogether different arises* under tariffs here protested because of the New York Central's unduly low rate from Dwight to Kankakee. Existing barge competition might dictate a reduction of four or five cents in the present G.M. & O. rates, but the  $5\frac{1}{2}\text{¢}$  New York Central rate requires an impossible  $12\frac{1}{2}\text{¢}$  reduction. By establishing a  $5\frac{1}{2}\text{¢}$  rate from Moronts and all intermediate points to Kankakee, the New York Central is erecting an exclusive "conveyor belt" over which the grain moves to the exclusion of every railroad operating in the territory and to the barge lines who seek their fair place in the transportation picture. The admonitions in the Transportation Policy enacted by the Congress of the United States prohibits this type of competition made on the thin allegation that that level is necessary to attract the business. The New York Central has published a rate far lower than necessary to fairly compete with other modes of transportation, ignoring completely the economic status of other railroads operating in the territory, and the shipping public dependent upon them. Furthermore, they have limited the use of [fol. 272] this low rate to a particular type of traffic, namely, Products of Corn, and thereby discriminate against Whole Corn in its natural state.

Cases before the Commission and the Courts in this regard show:

Competition and rate making: "The Commission has the power and jurisdiction to restrain rail rate reduc-



tions when necessary to enforce compliance with the national transportation policy."—*Atlanta & St. A.B. Ry. Co. v. United States*, 104 F. Supp. 193 (198)\*.

"The Commission is charged with the specific duty to preserve the inherent advantages of each mode of transportation subject to provisions of the act, and to prevent and eliminate unfair and destructive competition not only within each form, but also between and among the different forms of carriage."—*Sugar Cases of 1951*, 284 I.C.C. 333 (351) [Citing 321 U. S. 194]; *Southwestern Tank-Truck Carriers Committee v. Abilene & S. Ry.*, 284 I.C.C. 75 (82, 85).

"Establishment of proposed rate, which is lower than the overall cost of water movement, would be lower than necessary to meet water competition, and would constitute an unfair competitive practice."—*Aluminum, Point Comfort, Tex., to East Davenport, Iowa*, 283 I.C.C. 85 (91).

"Being lower than necessary to meet tank-truck competition proposed rail rates would result in an undue burden upon respondents' (rail carriers) other traffic. The problem is to arrive at an adjustment which will square the national transportation policy and other provisions of the act, and be fair to both forms of transportation."—*Petroleum Products in Illinois Territory*, 280 I.C.C. 681 (691).

Again, we reiterate, that showing the competitive situation on grain from as many origins as are involved in Illinois is not readily available. It is a sizeable undertaking to gather this factual data together, not possible in time for this writing, but if a reasonable time is allowed for a public hearing this protestant will undertake a comprehensive competitive presentation for the Commission's examination.

[fol. 273]

°V

### Minimum Rate Provisions Under Transit

Pages 25 to 29, inclusive, in Appendix A attached are excerpts from several tariffs showing the minimum rate provisions that arise under transit and the effect thereof under the New York Central's competitive rate of  $5\frac{1}{2}\phi$  per 100 pounds to Kankakee on which they limit the application of the reduced basis to apply only on Corn Products.

Page 25 is the title page to New York Central Tariff 10705-E, L.C.C. No. 1798, indicating that the tariff covers rules and charges governing transit privileges on grain, grain products and other commodities in carloads at Buffalo, New York. Page 26 is a reproduction of page 8 showing in Item 630, paragraph (a) "the through rate to be applied from point of origin to final destination will be the lawfully published rate in effect via the transit point at time of initial shipment *on the commodity covered by the inbound billing* matched against the outbound shipment ..." Paragraph (d) states, "In no case shall the rate on a shipment be less than the lawful rate from point of origin to the transit point, plus the transit charge, nor less than the lawful rate from the transit point to final destination, plus the transit charge, *whichever is higher.*" A combination of these two provisions means that the through rate would be that applying on Corn, the inbound commodity, from point of origin to final destination. Therefore, it requires the protection of the *higher Corn rate* from point of origin to final destination if transit is received at Buffalo and processed into Corn Products ultimately destined to points [fol. 274] in the Eastern Territory. This results in a sizeable penalty to the transit operator at Buffalo, New York as compared to the transit operator located at Kankakee, Illinois, who is not bound by such minimum rate rule.

Page 32 of Appendix A is a statement of Whole Corn rates and Corn Products rates from Moronts, Illinois to various destinations in the eastern territory on the New York Central, Pennsylvania and Erie Railroads. Under the 3-way rule arising under transit, we note that the rates from Moronts to Buffalo, New York on Whole Corn is  $64\phi$  per 100 pounds. Thus the rate a processor at Buffalo would

pay on the whole grain moving from origin into his transit station when he processes the Corn at Buffalo and sells the products to Rochester, New York, the through Corn Products rate of 51¢ applies *subject to the rate on the Whole Corn from origin to Buffalo as a minimum*. This minimum rate provision results in a penalty to the Buffalo transit operator of 13¢ per 100 pounds while his competitors located farther west in the Central Territory would not have such a penalty accrue. A myriad of different situations result in the protection of the "3-way rule" and the "minimum rate rule", under transit, and vary from point to point. This cannot be shown in its entirety at this moment, but the Chicago Board of Trade will undertake to make an extensive study for presentation to the Commission at the public hearing, if one be granted. An examination of page 31 shows [fol. 275] the minimum rates that would obtain into any of the transit points shown on whole corn in the first column, whereas the through rate on grain products might accrue to other transit operators differently located.

Page 27 is an excerpt from Pennsylvania Railroad Tariff 200-B, I.C.C. No. 2900, wherein the underscored portion provides that the through rate will be on the commodity shipped into the transit point or out of the transit point, *whichever is higher*, and in no case will the through rate be less than from point of origin to the transit station or less than the rate from the transit point to final destination, *whichever is higher*. Therefore, transit operators operating under this tariff would have to apply the through rate, the higher basis applicable to Whole Corn, and not be entitled to the low rates published in New York Central Tariff 701-A, as are other transit operators which protect the low corn products rates published therein.

Page 28 is an excerpt from New York Central Tariff 10706-B, I.C.C. No. 1752, wherein Item 815 therein requires a payment of a through rate based upon the inbound or outbound commodity, *whichever is higher*, but does not require the observance of the minimum rate from origin to transit station or transit station to transit destination except to a limited extent.

Page 29 of the Appendix is a reproduction of page 22 of N.Y.C. & St. L. Tariff 102-Z, I.C.C. No. 6268, stating that



*the through rate to be applied to transit grain shall be the [fol. 276] lawfully published rate through from original point of shipment to final destination in effect via the transit point at the time of initial shipment from point of origin applicable to the commodity covered by the inbound billing. Unless otherwise stated in the tariff, it would require an observance of the through rate applicable on Whole Corn without the minimum rate rule from point of origin to the transit station or from transit station to transit destination, also previously referred to.*

Therefore, the transit tariffs long in existence have two general minimum rate provisions. Namely, one stating that the through rate to be protected on a transited shipment will be that applying on the commodity received into the transit station or that forwarded from the transit station *whichever is higher*, and secondly that in no case shall the through rate be less than the rate from origin to transit or transit station to transit destination, whichever is higher. *The transit circulars in the East are not uniform*, some contain one of the provisions, some the other provision. At some transit stations neither provision is shown, while at other instances, both provisions are shown. Therefore, when whole corn and corn products are treated separately and are accorded widely different levels of rates, serious penalties can accrue to transit operators throughout the entire territory. It should be noted that prior to the New York Central according a different level of rates, grain products throughout the Trunk Line and New England Territory were but  $\frac{1}{2}\text{¢}$  higher than the prevailing grain rates. This was a relationship that stood over many years and at most, [fol. 277] the minimum rate rules could only be effective to the extent of a  $\frac{1}{2}\text{¢}$  difference, whereas under the New York Central  $5\frac{1}{2}\text{¢}$  rate to Kankakee, differences as high as  $18\frac{1}{2}\text{¢}$  result.

Manufacturing, milling and processing under transit are vital to the grain industry whose members must be on an equal basis in drawing grain from the same origin territory and selling competitively at destination. The wide variation of transit rules of the different railroads under the wide disparity of rates created by the New York Central disrupt this equality. Two railroads serving the same

transit station may have rules of such different character that one processor is at a complete disadvantage to his competitor. We here ask the Interstate Commerce Commission to order cancelled New York Central unlawful competitive rates pending a final determination of this matter.

## VI

### New York Central's Discrimination Against Chicago

Reference has been made to the attempt on the part of the New York Central to discriminate against the Chicago market and gateway in Supplement 120 to New York Central Tariff 701-A, shown on page 18 scheduled to become effective March 24, 1957. We would like at this point to examine the action there taken and the attempt that might be here made to abolish this equality and place Kankakee in a preferred position. Page 30, in exhibit A attached hereto, is a statement of rates on the Kankakee Belt Line of the New York Central to Chicago and to Kankakee, [fol. 278] Illinois, under Ex Parte 206. It will be noted that in the column headed "Other" and those appearing opposite the reference mark (1) have the same rate to Chicago from Moronts, Ill., to Budd, Ill., inclusive, as apply to Kankakee appearing in the last column. Prior to December 15, 1956, therefore, the rates from those origins to the East were equal combinations over Chicago or Kankakee and have been so related for many decades. On that date, new combinations without Fourth Section Relief, were made over Kankakee using the 5¢ (X-196) rate to the re-shipping point plus the proportional rate beyond, whereas, the full combination over Chicago was still the high rates shown on page 30 of the appendix referred to above, which are unreasonable in violation of section 1, unduly discriminatory and unjustly preferential in violation of section 3 of the Interstate Commerce Act. There is no justification for a 24¢ rate to Chicago, *the actual competitive barge unloading port* wherein a distance of 158.4 miles of the N.Y.C. is involved, and concurrently maintain to Kankakee, Illinois to which there is no barge competition, a 5 1/2¢ (X-206) rate for 83.5 miles. It is unreasonable violating section 1 of the Act.

## VII

## Fourth Section Departure Territory

The scope of the origin territory departures involved in the Fourth Section Application in connection with the rates into the Trunk Line and New England Territory is very large and not susceptible to a full showing at this writing. Maps portraying this origin territory will be undertaken [fol. 279] by the Chicago Board of Trade and presented at the hearing, if granted, so the Commission can be fully informed of the extent to which the low level of rates published in New York Central Tariff 701-A are operative. A cursory examination of the situation reveals that it embraces a *four state area* and is of such magnitude that the Commission will desire the complete information in detail. There is presently assigned for hearing in Kansas City an extensive hearing to last at least one week under Southern Governors complaint Docket 31874, in which the rates on grain and grain products and related articles throughout the entire country are involved and this protestant is obliged to actively participate in that hearing and, therefore, unable to devote full time and attention to this New York Central rate situation. Therefore, we pray that the Commission will see fit to enter upon an investigation of this Fourth Section Application and assign the matter for public hearing to permit all interested parties to submit facts necessary to fully appraise the Commission of the matter in controversy.

## VIII

## Importance of an Investigation

Much has heretofore been said relative to "unfair and destructive competitive practices" in violation of the National Transportation Policy that arise under the establishment of a 5½¢ rate to meet barge and truck competition. Injured parties located throughout the state of Illinois in personal possession of facts relating to the competitive situation will attend the public hearing, if granted, to inform the Commission of the evils arising out of an unduly low level of the rates. This factual information is only *within the personal knowledge of producers,*



elevator operators and grain merchants located on other railroads in the territory adjacent to the New York Central's Kankakee Belt Line who have substantial investments in grain facilities which have depreciated in value for the forwarding of rail shipments entirely due to the cross-country competition that has arisen from this destructive type of rate construction. These interested parties should have the opportunity to appear before the Interstate Commerce Commission and express their views in this matter so vital to their continued existence in the grain business. They cannot all be reached in time to submit their views in writing, and would not be able to fully express themselves in writing regarding all facets of their problem. In order to give these rural agriculturalists a fair opportunity to air their grievances, the Commission should enter upon an investigation assigning the matter for public hearing in Chicago, Illinois, a point convenient to them.

## IX

### Cancellation of Existing Rates

The continued existence of the 5½¢ rate combination over Kankakee, Illinois which became effective December 15, 1956, is in violation of sections 1, 2, 3, 4 and 6 of the Interstate Commerce Act and should be cancelled by the Interstate Commerce Commission pending the outcome of [fol. 281] this proceeding. Their existence is dependent upon Fourth Section Relief, here under consideration, and that relief should not be granted until there has been a full and complete hearing thereon and the lawfulness of the 5½¢ rate determined. Until that determination is made, the existing unlawful rates should be cancelled to prevent irreparable injury to the future users thereof until such time as it can be conclusively determined that competitively it is within full compliance of the law. The New York Central confesses in their application for Fourth Section Relief that the rates effective December 15, 1956, do not have proper relief and are thus without lawful existence *and, under these admitted statements of fact, we maintain they should be cancelled immediately.* In our opinion, the Interstate Commerce Commission has no alternative but to exer-

cise its duty to cancel these rates since the Act that provides in section 15 "the Commission . . . shall make an order that the carrier or carriers shall cease and desist from such violations to the extent to which the Commission finds that the same does or will exist". The rates in question are illegal by the New York Central's own admission in Fourth Section Application 33955 and we request the Commission to order those rates cancelled.

## X

### Conclusions

In our opinion, rail carriers should have the opportunity of meeting their competition at a fair level of rates that are not "unfair and destructive competitive practices" in [fol. 282] violation of the National Transportation Policy; nor should they be so low as to cast the burden of their existence on other forms of traffic in violation of section 1; should not be prejudicial or discriminatory favoring some markets or gateways over others, or select shippers over others; and last but not least, favor some commodities over others, in violation of section 3 of the Interstate Commerce Act. In meeting the competition, the rates should be reasonably compensatory for the service rendered; consistent with the public interest; will foster sound conditions in transportation among the several carriers; without unjust discrimination, undue preference or advantage; or unfair or destructive competitive practices. The rates involved herein are contra to these admonitions enumerated in the Interstate Commerce Act and the New York Central Railroad Company should be called upon in an investigation proceeding to justify them.

[fol. 283]

### Prayer

Wherefore, the petitioner prays that the Fourth Section Application herein protested be the subject of an investigation by the Interstate Commerce Commission, and that a public hearing be assigned at Chicago, Illinois, for the purpose of permitting all shippers and interested parties to appear and fully present their case in opposition to it. In addition, this petitioner specifically requests that the exist-

ing rates from the New York Central origins to the Western Termini of Eastern Trunk Line Territory and points east thereof which became effective December 15, 1956, be ordered cancelled by the Interstate Commerce Commission to prevent their unlawful continuance pending the outcome of this proceeding.

Respectfully submitted,

Board of Trade of the City of Chicago, R. D. Erickson, Assistant Manager, Transportation Department, J. S. Chartrand, Of Counsel, Transportation Department, 141 West Jackson Boulevard, Chicago 4, Illinois.

Dated at: Chicago, Illinois, July 16, 1957.

Certificate of service (omitted in printing).

[fol. 286]

APPENDIX "A"

TO

PROTEST FILED BY

BOARD OF TRADE OF THE CITY OF CHICAGO

TO

FOURTH SECTION APPLICATION NO. 33955

FILED BY

AGENT O. E. SCHULTZ, VICE-CHAIRMAN

TRAFFIC EXECUTIVE ASSOCIATION  
EASTERN RAILROADS

[fol. 287] Map "A"—Map of New York Central RR from Moronts, Ill. to Kankakee, Ill., and of the Illinois Waterways omitted from the record here. Printed at page 115.



## MAP "B"

MAP "B"  
Enlarged Map of New York Central from  
Moronts, Ill., to Kankakee, Ill.





200

[fol. 289]

**ILLINOIS FREIGHT ASSOCIATION  
APPLICATION I.R.C. D-503-195**

Chicago, June 18, 1956

**Org.**

**P.B. 923 Time expires 7-7-56**

The following is listed for consideration at the next meeting of the Illinois Rate Committee.

**R. G. Raasch, Chairman**

---

**Commodity:**

**Corn, carloads.**

**Minimum Weight:**

**100,000 pounds.**

**From:**

**West Kankakee, Union, Hill, Reddick, Blair, Dwight, Sunbury, Budd, Missal, Streator, Milla, Lostant, Priscilla, McNabb, Granville and Moronts, Illinois.**

**To:**

**Kankakee, Illinois**

**Present Rate:**

**Various.**

**Proposed Rate:**

**5¢ per cwt., including X-196 increase (See Notes A and B).**

**Note A—**

**Rates to be subject to milling in transit.**

**Note B—**

**Appropriate tariff amendments to provide for non-application of through rates from these stations where**

combination rates are lower. (See Item 278-J of C.T.R. Tariff 245-H and Item 125, Supplement 11 of W.T.L. Tariff 68-B).

**Routing:**

NYC (W) Direct.

**Fourth Section:**

Fourth Section Relief to be obtained.

**Effective Date:**

Statutory notice.

**Tariff Vehicle:**

NYC tariff 701-A.

**Justification:**

The present rates are merely paper rates as there is no rail movement of Grain from these stations.

Local elevators on our line at these stations have capacity of 3000 to 5000 cars, yet the Corn handled through or via these elevator operations moves by truck to Illinois River Landings, then barge beyond.

Corn is bought on a price at Illinois River Landings and moved via barge to Chicago at rates ranging from 5¢ cwt. from Illinois River Landings Spring Valley and LaSalle, to 4¼¢ cwt. from Morris, Ill.

[fol. 290] Thus this proposal is merely to equalize via rail the rate presently in effect via barge and to permit of NYC handling Corn to Kankakee and the milled products in rail movement beyond Kankakee.

The milled products involved are: Corn Grits, Corn Meal, Corn Flour, Hominy Feed and Brewers Flakes.

No new transit is involved as these products are presently provided as outbound commodities under milling in transit arrangements.

We believe we should be permitted every opportunity to transport Corn from our own stations to Kankakee—for milling—insuring our handling products outbound on the same basis as available from these stations via truck-barge.

The reason for proposing the proposed rate subject to transit—a typical example would be on Corn—bid a certain price at Illinois River Landing (LaSalle, Ill.), is trucked from Moront~~e~~ and moved via barge to Chicago at rate of 5¢ cwt.

At Chicago the Corn is milled and product reshipped to New York at reshipping rate of  $49\frac{1}{2}$ ¢ cwt., or through rate of  $54\frac{1}{2}$ ¢ cwt.

This compares with a through rate—Moronts to New York—of 72¢ cwt. which Kankakee miller would pay on Corn moving via rail; however, as previously stated, there is no rail movement of Corn from these Kankakee Belt Stations.

It is thus obvious all we are proposing is to permit of our handling Corn originating at our stations on the same basis as available via competing forms of transportation.

Of course, another way to accomplish this would be to provide for application of reshipping rates on ex-truck Corn, in the same manner as applicable on ex-barge Grain, as the Commission itself in "Grain Proportionals, Ex-Barge to Official Territory", Volume 248, Page 323, Commissioner Eastman stated:

"Question has been as to whether the failure to apply reshipping rates to grain which has been trucked into Chicago results in violation of sections 2 and 3. This question is not here in issue. My tentative opinion upon it is that where the movement by truck is from territory from which grain can be moved by rail or by water to Chicago subject to the application of the reshipping rates east-bound, the failure to apply such rates to the grain brought in by truck does result in violation of sections 2 and 3, provided adequate provisions for the identification and policing of such shipments are practicable and enforceable."

Rather than here propose such a new precedent, we believe it to be more in the interest of the railroad industry to merely equalize the competitive situation by establishing via Kankakee the same transportation cost as available via competing form of transportation via Chicago.

We would thus be in position to transport the Corn into Kankakee at revenue per car \$50.00, at car mile earnings ranging from 60¢ to \$2.25, no switching absorptions involved and to also insure outbound movement of products via rail.

Origin of Proposal:

Carrier.

[fol. 291]

July 10, 1956

File: IRC Appln. 503-195  
cc: 4502-27

Dear Sir:

Subject: Corn, CL, from West Kankakee, Union, Hill, Reddick, Blair, Dwight, Sunbary, Budd, Missal, Streator, Milla, Lostant, Priscilla, McNabb, Granville, and Moronts, Illinois to Kankakee, Ill.

Supplementing our letter of June 21, 1956, concerning IRC Application 503-195, suggesting a rate of 5 cents per 100 pounds on the above caption, which was listed for consideration at the July, Illinois Rate Committee meeting.

The Illinois Carriers on consideration did not recommend the proposal as docketed.

If there are any further developments, we will write you further.

Yours very truly,

Asst. Freight Traffic Manager



[fol. 292]

July 17, 1956

File: IRC Application 503-195  
cc: 4502-27

Dear Sir:

Subject: Corn, C.L., from West Kankakee, Union, Hill, Reddick, Blair, Dwight, Sunbary, Budd, Missal, Streator, Milla, Lostant, Priscilla, McNabb, Granville and Moronts, Illinois to Kankakee, Illinois.

Supplementing our letter of July 10, 1956 relative to IRC Application 503-195 suggesting a rate of 5 cents per 100 pounds on the above caption, which was considered, but not recommended, at the July Illinois Rate Committee meeting.

The matter has been listed for review at the July meeting of the Illinois Freight Association Traffic Executive Committee under EC Docket 4826.

It will be our purpose to inform you of the future developments.

Yours very truly,

Asst. Freight Traffic Manager.

[fol. 293]

July 27, 1956

File: IRC Appln. 503-195  
cc: 4502-27

Dear Sir:

Subject: Corn, C.L., from West Kankakee, Union, Hill, Reddick, Blair, Dwight, Sunbary, Budd, Missal, Streator, Milla, Lostant, Priscilla, McNabb, Granville, and Moronts, Illinois to Kankakee, Illinois.

Supplementing our letter of July 17, 1956, concerning IRC Application 503-195 suggesting a rate of 5 cents per 100 pounds on the above caption which was listed for review at

the July Illinois Freight Association Traffic Executive Committee Meeting under EC Docket 4826.

On consideration by the Traffic Executive Committee, the proposal as docketed was recommended.

Yours very truly,

Asst. Freight Traffic Manager

[fol. 294]

# ILLINOIS FREIGHT ASSOCIATION

Chicago, August 7, 1956

Appl. IRC-K-503-195

E.C. Docket 4826

Determination Advice E. C. 596

Traffic Executive Committee  
and Tariff Publishing Agents

Commodity:

Corn, carloads.

Minimum Weight:

100,000 pounds.

From:

West Kankakee, Union, Hill, Reddick, Blair, Dwight,  
Sunbury, Budd, Misal, Streator, Milla, Lostant, Pris-  
cilla, McNabb, Granville and Moronts, Illinois.

To:

Kankakee, Illinois.

Recommended Rate:

5¢ per cwt., including X-196 increase (See Notes A  
and B).

**Note A—**

Rates to be subject to milling in transit.

**Note B—**

Appropriate tariff amendments to provide for non-application of through rates from these stations where combination rates are lower. (See Item 278-J of C.T.R. Tariff 245-H and Item 125, Supplement 11 of W.T.L. Tariff 68-B.)

**Routing:**

NYC(W) Direct.

**Fourth Section:**

Fourth Section Relief to be obtained by NYC(C) RR.

**Tariff Vehicle:**

NYC tariff 701-A.

**Effective date:**

Statutory notice.

R. G. Raasch, Chairman.

[fol. 295]

**WESTERN TRUNK LINE COMMITTEE**

Union Station

Chicago 6

G. A. Moller  
ChairmanAugust 23, 1956  
EE Appl'n. 21-4388Freight Traffic Officers,  
Western Trunk LinesReplies Due by  
September 7, 1956

Gentlemen:

**CORN, CARLOADS, FROM STATIONS IN ILLINOIS  
TO KANKAKEE, ILLINOIS**

The following has been received from Chairman Raasch and is submitted for your consideration:

"There is attached hereto a copy of I.F.A. E.C. Docket 4826 concerning proposed rate on Corn from West Kankakee, Union, Hill, etc., to Kankakee, Illinois.

The proposal was considered at the July 1956 I.F.A. Traffic Executive Committee meeting and was recommended, the record of which is as promulgated in the attached Determination Advice E. C. 596 dated August 7th. You will note the proposal also contemplates appropriate tariff amendments to provide for non-application of through rate from these stations where combination rates are lower, which feature should receive consideration of your Committees."

Unless objections are recorded by September 7, 1956, you will be considered as concurring.

Yours truly,

G. A. Moller

cc: Mr. O. E. Schultz, Chrm. GFTC-E.R.R. New York, N.Y.  
Mr. R. G. Raasch, " I.F.A., Chicago, Ill.  
Mr. C. S. Baxter, " FTC-C.T.R., Chicago, Ill.  
Mr. J. P. Harrington " FTC-N.E.T.R., Boston, Mass.



[fol. 296]

**GENERAL FREIGHT TRAFFIC COMMITTEE—  
EASTERN RAILROADS**

One Park Avenue, New York 16, N. Y.

**DETERMINATION ADVICE**

The changes in rates, rules and regulations shown below are recommended.

When a carrier or carriers are specified herein this advice shall also embrace any other line or any joint route in which all of the carriers concur in the publication of a joint rate or arrangement.

When traffic matters covered by this determination advice involve tariffs issued by the Tariff Publishing Agents in Boston, Mass., New York, N. Y., and Chicago, Ill., they will also be understood to refer to all carriers interested in such tariffs unless the Tariff Publishing Agent in Boston, New York, or Chicago, as the case may be, is advised to the contrary within five (5) days from the date hereof.

Traffic matters covered hereby do not refer to Coal, Coke (the direct product of coal) or Iron Ore.

O. E. Schultz, Chairman.

October 31, 1956.

Determination Advice No. C-1301-383

Traffic Executive Association—  
Eastern Railroads Meeting October  
18, 1956 (Topic 19) and as corrected  
by Errata issued October 29, 1956.  
Submittal (8-22-56)

Establish a proportional rate of 5 cents per 100 pounds, on Corn and Corn Products, carloads, minimum weight 100,000 pounds.

From—

West Kankakee Ill.  
 Union Ill.  
 Hill Ill.  
 Reddick Ill.  
 Blair Ill.  
 Dwight Ill.  
 Sunbury Ill.  
 Budd Ill.

Misal Ill.  
 Streator Ill.  
 Milla Ill.  
 Losant Ill.  
 Priscilla Ill.  
 McNabb Ill.  
 Granville Ill.  
 Moronts Ill.

To—

Kankakee, Ill.

for application only on shipments destined to Western  
 Termini of Eastern Trunk Lines and east thereof. Through  
 rates to be non-applicable from these origins where lower.  
 Rate to be subject to milling in transit.

Route:

Via N.Y.C.(W) B.R. direct.

Issued to meet water and highway competition.

O. E. Schultz, Chairman.

nd

List 2—(G) 1

Folio NGDA—11752

[fol. 297]

October 31st, 1956

File: C1301-383

Memo for File:

In conference with Mr. W. K. Ulrich, AFSM of the New  
 York Central System, Chicago, Ill., relative to Topic 19 of  
 the TEA Proceedings of October 18, 1956, which approved  
 the publication of a rate of 5 cents per 100 pounds, includ-  
 ing Ex Parte 196 increase on Corn and Corn Products,  
 C. L., minimum weight 100,000 pounds to apply as a pro-  
 portional rate, subject to milling in transit, from New  
 York Central stations in Illinois located west of Kankakee  
 to Kankakee, Ill., the question of seeking fourth section  
 relief was discussed and considered.

In view of the type of publication that is here involved, it was determined that no fourth section relief was necessary at this time as the rates which are to be published would create no departures themselves from the origins involved to Kankakee. Furthermore, the proportional rate which will be used beyond Kankakee is amply protected by relief afforded under Fourth Section Order No. 18407. From past experiences it is known that no additional relief is necessary to observe combination rates or the aggregate of intermediaries even though they might produce lower charges in the aggregates than those produced by local rates applicable from higher rated intermediate points, provided of course, that each factor in the combination is properly protected. Therefore, as the rates in this instance would be protected individually under the fourth section of the act, it has been determined that no additional relief is necessary.

This situation was informally discussed with Mr. Robert Newell, Chairman of the Fourth Section Board, by telephone and he agreed that there will be no additional fourth section relief necessary at this time, in view of the fact that each factor of the combination is protected insofar as fourth section is concerned. We then suggested that the rate of 5 cents per 100 pounds, on the traffic involved be published to Kankakee as proposed by the New York Central without the filing of application for fourth section relief. Mr. Ulrich was satisfied with the conclusions reached, in this case and would progress the proposed publication in NYC and Agent Hinsch's tariffs in order that the rates might become effective at the earliest possible date. It was further decided that since no fourth section relief was required, at this time, that the covering determination advice would make no reference thereto and instructions were given to publish same accordingly.

H. W. Piekarski

P-ias

CC: Mr. W. K. Ulrich, AFSM, NYC RR, Chicago, Ill.





Subject (except as otherwise provided by "C" and "N") to TARIFF OF INCREASED RATES AND CHARGES X-178-C, Agent H. R. Hinesh's 100 4879, OTC 2373, HIOO 522, POC-NY 322, Ohio 2224, PaPUC 414, supplements thereto or successive issues thereof and subject to Increase in Rates and Charges, as provided in Item X-194 Series, page 2 of Supplement 109.

**SUPPLEMENT**

**TO**

C. T. C. 286  
Ill. C. C. 172  
Ind. R. C. 213

M. P. S. C. 224  
P. S. C.-N. Y. 541  
Ohio 346

I. C. C. 1169  
Pa. P. U. C. 204  
P. S. C.-W. Va. 135



# THE NEW YORK CENTRAL RAILROAD COMPANY

IN CONNECTION WITH

PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF, AS AMENDED

**SUPPLEMENT 114**

**TO**

## FREIGHT TARIFF 701-A

Cancels Supplement 112

Supplements 26, 31, 109, 113 and 114 and the following Special Supplement contain all changes.  
Supplement 29 (Ex Parte 175) (Blanket 229).

### LOCAL, JOINT AND PROPORTIONAL FREIGHT TARIFF

NAMING RATES IN CENTS PER 100 POUNDS (EXCEPT AS NOTED)

**ON**

## GRAIN AND GRAIN PRODUCTS

AND OTHER ARTICLES AS DESCRIBED ON PAGES 5 AND 6 OF TARIFF

**ALSO**

### FEED OR FEED INGREDIENTS, ANIMAL OR POULTRY

AS DESCRIBED IN RULE 2, PAGE 34 OF TARIFF, AS AMENDED

IN CARLOADS (Except as Noted)

**FROM STATIONS ON**

**TO STATIONS IN**

#### NEW YORK CENTRAL RAILROAD

(Stations in United States, Buffalo, N. Y.,  
Clearfield, Pa., and West)  
and other Initial Carriers shown on Page 3 of tariff

ILLINOIS  
INDIANA  
IOWA  
KENTUCKY  
MICHIGAN  
MISSOURI

NEW YORK  
OHIO  
PENNSYLVANIA  
WEST VIRGINIA  
WISCONSIN

**ALSO MILEAGE RATES, SEE PAGES 521 AND 522 OF TARIFF**

Governed, except as otherwise provided herein, by Official and Illinois Classification (OFC) and by exceptions in Agent H. R. Hinesh's Tariff 120 Series, Agent C. W. Boen's Tariff 90 Series, and Agent R. G. Rasmussen's Tariff 80 Series (see Rule 126 of tariff, as amended).

**ISSUED NOVEMBER 13, 1956**

**EFFECTIVE DECEMBER 15, 1956**

Issued by

R. T. WAITE,  
Manager Tariff Bureau,  
465 Lexington Avenue,  
NEW YORK 17, N. Y.

## SECTION 2

## EXPLANATION OF REFERENCE MARKS USED IN TARIFF

Page 37 of tariff. Change:

- Will not apply to Kankakee, Ill., on Soybeans on Illinois Intrastate Traffic, nor on Corn, as described on page 501 of tariff, as amended, naming five (5) cent rate to Kankakee, Ill., from origins named therein for interstate proportion application, as provided on page 501 of tariff, as amended.

## EXPLANATION OF REFERENCE MARKS USED IN THIS SUPPLEMENT

Reduction.

\*Applies only on Interstate Traffic.

\*Applies only on Intrastate Traffic.

\*Applies only on Grain.

Published to meet highway competition.

Rates apply on Grain when shipments originate in Wisconsin, Iowa, Minnesota, Nebraska, North Dakota and South Dakota, or milled or malted in transit from Grain originating in said territory.

Rate applies only from the tracks of the NYC(C) and does not include switching or river transfer charges to East St. Louis, Ill.

Applies only on traffic originating beyond E. St. Louis, Ill., where no through rates are in effect to Cincinnati, Ohio, Jeffersonville, Ind., and Louisville, Ky., and destined to stations in Carolina, Green Line and Southeastern Territories, as per Agent H. R. Hirsch's Territorial Directory 3-J, ICC 4622; also Appalachia, Va., Mendota, Va., Speers Ferry, Va., Harlan, Ky., Lot, Ky., Hopkinsville, Ky., and Middleboro, Ky., and points taking same rates, as per Agent C. A. Spaninger's Southern Group Basis Tariff 700-E, ICC 1516.

On traffic to other points in Kentucky, the following basis will apply:

Rates to Winfield, Tenn., as maxima to stations on the CNO&TP or Sou north of this point.

Rates to Nashville, Tenn., as maxima to stations on the IC, Hopkinsville, Ky., and intermediate points.

Rates to Nashville, Tenn., as maxima to stations on the L&N, intermediate to Clarksville, Tenn., and Nashville, Tenn.

Also applies on traffic originating at points west of the Mississippi River when for export through the Gulf Ports, viz.:

Chickasaw, Ala.

New Orleans, La., &amp; Subports, viz.:

Panama City, Fla.

(Sou Ry only)

Algiers, La.

Harvey, La.

Pascagoula, Miss.

Garyville, La.

Avondale, La.

Marrero (Amesville), La.

Pensacola, Fla.

Gulfport, Miss.

Belle Chasse, La.

Port Chalmette, La.

Theodore, Ala.

Mobile, Ala.

Braithwaite, La.

Shrewsbury, La.

Moss Point, Miss.

Gouldsboro, La.

Three Oaks, La.

Gretna, La.

Westwego, La.

or Port Everglades, Fla., when forwarded via Cincinnati, Ohio, and Louisville, Ky.

Applies only on traffic destined to points named in Agent C. A. Spaninger's Mississippi Valley Grain Tariff 133-L, ICC 1353.

Applies only on traffic reshipped via NYC(C) to all points on the NYC(C) or its connections with accorded milling-in-transit privileges at Louisville, Ky.

Applies only on traffic originating at East St. Louis, Ill., and is not applicable on traffic originating beyond.

Route formerly provided and not brought forward is cancelled. Account shown in error.

Not subject to Tariff of Increased Rates and Charges X-175-C and X-196-A, referred to on title page hereof.

Rate applies only on Corn and Corn products, when milled-in-transit, and only as proportional rate to Kankakee, Ill., on traffic destined to the Western Termini of Eastern Trunk Lines and East thereof, as defined in Central Territory Railroad Tariff 1-L, Agent H. R. Hirsch's ICC 4176. Minimum weight 100,000 pounds. Rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Will also apply on shipments which arrive by river or canal at Chicago, Ill. Rate is applicable as of the date shipments leave the point of origin as shown on the shipping directions surrendered at Chicago, Ill.

(with  
number  
enclosed)

Released from supplement bearing the number enclosed within the square. See Rule 190 of tariff, as amended.

## EXPLANATION OF NOTES

(Applies only in connection with rates making specific reference thereto)

Note 14—Cancels Note 14, page 33 of tariff, as amended by page 5 of Sup. 91. Expires with October 1, 1957, unless sooner cancelled, changed or extended. (Corn, page 500 of tariff.)

Note 15—Cancels Note 15, page 33 of tariff, as amended by page 5 of Sup. 91 and title page of Sup. 110. Effective October 2, 1957, unless sooner cancelled, changed or postponed. (Corn, page 500 of tariff.)

## SECTION 3

## GRAIN AND GRAIN PRODUCTS, AS PER LISTS REFERRED TO IN RULE 1, PAGE 35 OF TARIFF

For Station FROM which rates apply, see Section 1 of tariff

FROM Station	Rates	Deliver- ing Line	Route	FROM Station	Rates	Deliver- ing Line	Route	FROM Station	Rates	Deliver- ing Line	Route
To Springfield, Ill.											
NYC											
Page 406 of tariff, as amended by page 47 of Sup. 91 and page 6 of Sup. 109.											
Change:											
6310	28	B&O	15, 18								
		GM&O	41								
		IC	51								
		INT	35, 47								
		Wab									

For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see page 2 of this supplement.

[fol. 299]

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Underscored ours.

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## SECTION 3

## RESHIPPING RATES

GRAIN AND GRAIN PRODUCTS, AS PER LISTS REFERRED TO IN RULE 1, PAGE 36 OF TARIFF

For Station FROM which rates apply, see Section 1 of tariff

FROM Station	Rates	Deliver- ing Line	Route	FROM Station	Rates	Deliver- ing Line	Route	FROM Station	Rates	Deliver- ing Line	Route
To Louisville, Ky.											
Page 551 of tariff, as amended by page 53 of Sup. 94. Change:											
NYC											
15015	<del>10</del> 10 19 17	NYC(C)	113								

## SECTION 4

GRAIN AND GRAIN PRODUCTS, AS PER LISTS REFERRED TO IN RULE 1, PAGE 36 OF TARIFF

For Station FROM which rates apply, see Section 1 of tariff

FROM Station	RATES				Delivering Line	Route	FROM Station	RATES				Delivering Line	Route
	Proper		Proportional					Proper		Proportional			
	↑	+	↑	+				↑	+	↑	+		
To Sheldon, Ill.													
NYC													
Page 577 of tariff, as amended by page 7 of Sup. 109.													
Change:													
15630													
15635	@21	@19	@14										
			@14										
			@16										

CORN, AS PER GRAIN LIST IN SECTION 1 OF AGENT H. B. HINSCH'S FREIGHT TARIFF 600-H, I. C. C. 4844

FROM	TO	RATE	Delivering Line	Route
Page 591 of tariff. Add:				
Blair	Ill.			
Budd	Ill.			
Dwight	Ill.			
Granville	Ill.			
Leasburg	Ind.			
Lehigh	Ill.			
Lostant	Ill.			
McNabb	Ill.			
Page 591 of tariff and 58 of Sup. 91. Change:				
Millford	Ind.			
Millford Junction	Ind.			
Page 591 of tariff. Add:				
Mills	Ill.			
Missal	Ill.			
Morons	Ill.			
Priacilla	Ill.			
Reddick	Ill.			
Smith Spar	Ill.			
Streator	Ill.			
Sunbury	Ill.			
Union Hill	Ill.			
Van's Siding	Ill.			
Page 591 of tariff and 58 of Sup. 91. Change:				
Waraw	Ind.			
Page 591 of tariff. Add:				
West Kankakee	Ill.			
	Kankakee	Ill.	NYC(W)	1
	Chicago	Ill.	NYC(W)	31
	Chicago	Ill.	NYC(W)	1
	Chicago	Ill.	NYC(W)	31
	Kankakee	Ill.	NYC(W)	1
	Chicago	Ill.	NYC(W)	31
	Kankakee	Ill.	NYC(W)	1

For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see page 2 of this supplement.

[fol. 300]

**C. T. C. 2171**  
H. R. Hirsch, Agent  
**Ind. R. C. D-863**  
H. R. Hirsch, Agent

**SUPPLEMENT**  
**TO**  
**Mich. P. S. C. 771**  
H. R. Hirsch, Agent

**I. C. C. 4499**  
H. R. Hirsch, Agent  
**I. C. C. A-3941**  
W. J. Frueter, Agent

**CENTRAL TERRITORY RAILROADS**  
**TARIFF BUREAU**  
(H. R. Hirsch, Agent)

**SUPPLEMENT 38**  
**TO**  
**FREIGHT TARIFF 535-C**  
Cancels Supplement 27

Supplements 3, 26, 36 and 38 contain all changes.

**PROPORTIONAL RATES**  
**APPLYING ON**  
**GRAIN AND GRAIN PRODUCTS**  
**CARLOADS**

FROM			TO Stations in
CAIRO, ILL.	EAST ST. LOUIS,	MANITOWOC, WIS.	INDIANA OHIO KENTUCKY PENNSYLVANIA MICHIGAN WEST VIRGINIA NEW YORK named on pages 10 to 60 incl., of tariff, as amended
CHICAGO, ILL.	ILL.	MENOMINEE,	
EAST JOLIET, ILL.	GALE, ILL.	MICH.	
EAST FT.	KANKAKEE, ILL.	MICHIGAN CITY,	
MADISON, ILL.	KEWAUNEE, WIS.	IND.	
EAST HANNIBAL, ILL.	MACKINAW CITY,	MILWAUKEE, WIS.	
ILL.	MICH.	PEORIA, ILL.	
EAST KROOK, ILL.	MANISTIQUE,	QUINCY, ILL.	
	MICH.	ST. LOUIS, MO.	
		THIBES, ILL.	
and other points named on pages 5 to 9 incl., of tariff, as amended			

Governed, except as otherwise provided herein, by Official Classification 65, I. C. C.-O. C. 65, Mich. P. S. C.-O. C. 65, W. S. Flint, Agent; by exceptions thereto, Tariff 130-C, I. C. C. 3926, Mich. P. S. C. 675, issued by H. R. Hirsch, Agent, and by supplements thereto or successive issues of said publications.

**ISSUED NOVEMBER 7, 1956**

**EFFECTIVE DECEMBER 15, 1956**

W. J. FRUTTER, Agent,  
616 W. Jackson Blvd.,  
Chicago 3, Ill.

Issued by  
H. R. HIRSCH, Agent,  
21 West Madison Street,  
Chicago 3, Ill.



## EXPLANATION OF NOTES

Note 45 Cancels Note 45 pages 1 and 2 of Supplement 27.

**APPLICATION OF RESHIPING OR PROPORTIONAL RATES APPLICABLE ON  
TRAFFIC ORIGINATING AT POINTS IN THE TERRITORY AS  
DESCRIBED BELOW**

Where reference is made to this Note rates will apply as follows:

Rates subject to the provisions of this Note are reshipping or proportional rates applicable on traffic reaching the reshipping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the reshipping point, and will only apply on such traffic when originating at points in the territory as described below, from which no single factor through commodity rates are in effect in connection with the outbound carrier via the reshipping point from original shipping point to final destination provided that in no case shall the combination through rate to and from the reshipping point be less than the local rate from the reshipping point to final destination nor less than the through joint rate in effect on the commodity reforwarded from the reshipping point from origin point of the grain to final destination of the grain or grain products via any route, whichever may be the higher. The difference between the through joint rate or the above rates of rates in effect to be added to the reshipping or proportional rate from the reshipping point. (See Supplement.)

On shipments which arrive by River or Canal at Chicago, Pekin or Peoria, Ill. These rates are applicable as of the date shipments leave the point of origin as shown on the shipping directions surrendered at Chicago, Pekin or Peoria, Ill.

These rates are subject to transit rules and regulations published in tariffs on file with the Interstate Commerce Commission.

Rates also apply on through billed shipments originating at points in territory as described in this Note, not stopped in transit at reshipping points subject to this application.

Exception.—The foregoing provisions as to the application of local rates or the rate from the origin point to final destination as minima will not apply on shipments arriving at Chicago, Pekin or Peoria, Ill., by River or Canal, nor on shipments of corn or corn products as enumerated in B-6 arriving at Kankakee, Ill., by NYC from NYC Stations West Kankakee, Ill., to Moronta, Ill. (Station Numbers 8200 to 8229).

A-1. Rates on Grain from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewanee, Wis., Manitowish, Wis., Manitowish, Wis., Menominee, Mich., and Milwaukee, Wis., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

A-2. Rates on Grain Products from Chicago, Ill., East Joliet, Ill., Kankakee, Ill., Kewanee, Wis., Manitowish, Wis., Manitowish, Wis., Menominee, Mich., Milwaukee, Wis., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products originating beyond. Will not apply on traffic originating in Trans-Mississippi River or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

B-1. Rates on Grain from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, (except as provided in paragraph B-2 hereof), subject to the provisions of this Note, apply on shipments of Grain when originating at points beyond. Will not apply on traffic originating in Trans-Mississippi or Northwest Territories (for description, see Notes 20 and 40, pages 76 and 84 of tariff, as amended).

B-2. Rates on Grain from Peoria, Ill., subject to the provisions of this Note will apply from Peoria, Bloomington, Crescent, Pekin, South Bartonville and Springfield, Ill., only as follows:

(a) As proportional or reshipping rates on shipments originating at stations shown in tariffs named in Note A page 57 of tariff, as amended, from which proportional rates are published to Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and only when such proportional rates are assessed into Peoria, Bloomington, Crescent, Pekin, South Bartonville or Springfield, Ill., and when the grain is destined to the following points:

Bellaire.....	Ohio	Crabtree.....	Pa.	Irvington.....	Pa.	Oil City.....	Pa.
Belle Vernon.....	Pa.	Dunkirk.....	N. Y.	Jacobs Creek.....	Pa.	Parkersburg.....	W. Va.
Bassener.....	Pa.	East Buffalo.....	N. Y.	Johnstown.....	Pa.	Pittsburgh.....	Pa.
Black Rock.....	N. Y.	Elisabeth.....	Pa.	Leckrone.....	Pa.	Point Pleasant.....	W. Va.
Blairville.....	Pa.	Ellwood City.....	Pa.	Masonville.....	Pa.	Ravenswood.....	W. Va.
Bridgeport.....	Ohio	Erie.....	Pa.	Marwell.....	Pa.	Salamanca.....	N. Y.
Brownsville.....	Pa.	Fairchance.....	Pa.	Monongahela.....	Pa.	Suspension Bridge.....	N. Y.
Buffalo.....	N. Y.	Gauley Bridge.....	W. Va.	Moundsville.....	W. Va.	Titusville.....	Pa.
Charleston.....	W. Va.	Grafton.....	W. Va.	New Martinsville.....	W. Va.	Washington.....	Pa.
Connellsville.....	Pa.	Huntington.....	W. Va.	Niagara Falls.....	N. Y.	West Newton.....	Pa.
Corry.....	Pa.	Indiana.....	Pa.	North Tonawanda.....	N. Y.	Wheeling.....	W. Va.

and points named on pages 10 to 69 incl., of tariff, as amended, taking same rates or arbitraries higher.

(b) As proportional or reshipping rates on shipments originating at points beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), Northwest Territory (see Note 40, page 84 of tariff, as amended), or traffic covered by paragraph (a) Section B-2 of this Note.

(Concluded on following page)

For explanation of reference marks, see last page of this supplement.



EXPLANATION OF NOTES

Note 45 Cancels Note 45 pages 2 and 3 of Supplement 37. -- Concluded:

B-3. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments of Grain Products (except on commodities bearing reference mark (a)), originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), Northwest Territory (see Note 40, page 84 of tariff, as amended), except as otherwise provided in paragraph B-5 below or on shipments subject to rates governed by the provisions of Note 50, page 88 of tariff; except that on shipments originating at stations shown in tariffs named in Note A, below, from which proportional rates are published to Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, and when the grain products are destined to the following points, rates on grain products subject to this Note, will only apply when the proportional rates published in tariffs named in Note A below, are assessed on the inbound shipments to Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended.

Bellaire.....	Ohio	Crabtree.....	Pa.	Irvinston.....	Pa.	Oil City.....	Pa.
Belle Vernon.....	Pa.	Dunkirk.....	N. Y.	Jacobs Creek.....	Pa.	Parkersburg.....	W. Va.
Bessemer.....	Pa.	East Buffalo.....	N. Y.	Johnstown.....	Pa.	Pittsburgh.....	Pa.
Black Rock.....	N. Y.	Elisabeth.....	Pa.	Leckrone.....	Pa.	Point Pleasant.....	W. Va.
Blairsville.....	Pa.	Ellwood City.....	Pa.	Masontown.....	Pa.	Ravenswood.....	W. Va.
Bridgeport.....	Ohio	Erie.....	Pa.	Maxwell.....	Pa.	Salamance.....	N. Y.
Brownsville.....	Pa.	Fairchance.....	Pa.	Monongahela.....	Pa.	Suspension Bridge.....	N. Y.
Buffalo.....	N. Y.	Gauley Bridge.....	W. Va.	Moundsville.....	W. Va.	Titusville.....	Pa.
Charleston.....	W. Va.	Grafton.....	W. Va.	New Martinsville.....	W. Va.	Washington.....	Pa.
Connellsville.....	Pa.	Huntington.....	W. Va.	Niagara Falls.....	N. Y.	West Newton.....	Pa.
Corry.....	Pa.	Indiana.....	Pa.	North Tonawanda.....	N. Y.	Wheeling.....	W. Va.

and points named on pages 10 to 69 incl., of tariff, as amended, taking same rates or arbitraries higher.

B-4. Rates on Grain Products bearing reference mark (a) from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments originating beyond, except will not apply on traffic originating in Trans-Mississippi River Territory (see Note 20, page 76 of tariff), or Northwest Territory (see Note 40, page 84 of tariff, as amended), except as otherwise provided in paragraph B-5 below.

B-5. Rates on Grain Products from Peoria, Ill., and points taking same rates as shown on pages 6 to 9 incl., of tariff, as amended, subject to the provisions of this Note, apply on shipments originating at points in Northwest territory and destined to points in the States of Indiana, Michigan and Ohio bearing reference "①" on pages 142 to 147 of tariff, as amended, under heading Northwest (see Note 40, page 84 of tariff, as amended).

B-6. Proportional rate from Kankakee will apply on corn and on the following products in carloads without regard to the existence of single factor joint through rates from NYC stations, West Kankakee, Ill., to Peoria, Ill., inclusive and without observing such single factor joint through rates as minima. Com-  
bination rates using proportional or reshipping rate from Kankakee on corn and the following products are not subject to Kankakee total rate as minimum:

Brewers' Flakes (not made from starch),	Feed, animal or poultry, prepared,
Brewers' Meal (not made from starch),	Feed, corn cereal offal (not cereal food preparations and not for human consumption),
Corn Bran,	Feed, flaked corn, toasted or not toasted (not a cereal food preparation and not for human consumption),
Corn Chop,	Gluten Feed,
Corn Dust,	Gluten Feed, sweetened,
Corn Feed (ground, not the product of starch or glucose factories),	Gluten Meal
Corn Flour,	Grits (not made from starch),
Corn Meal,	Ground Corn,
Corn Malt,	Hominy,
Corn Malt Sprouts,	Hominy Feed,
Corn Oil Cake (ground or unground),	Hulled Corn,
Corn Oil Meal,	Mash, spent grain, dried, without or with not exceeding one per cent (1%) of Vitamin A added.
Corn Screenings (whole or ground),	
Corn Skimmings,	
Cracked Corn,	

NOTE A.

Issuing Line or Agent	Tariff	IOC	Item, Index or Reference
AT&SF.....	7124-K	14627	Items 315, 320, 325, 330, 335 and 340.
CB&Q.....	G. F. O. 1346-U	20241	Rates provided under column P.
C&DM.....	5-P	B-352	Page 13.
C&NW.....	G. F. D. 17042-D	11209	Rates under column B on pages 34 and 36.
CRI&P.....	34560-D	C-13411	Item 750.
GM&O.....	G. F. O. 3857-C	238	Item 350.
IC.....	1537-M	A-11597	Rates bearing reference 5 encircled on pages 40 to 72 incl.
IHT.....	480-G	A-15	Page 6.
M&SL.....	1500-J	29	Index Numbers 1155 to 1205 incl.
NYC.....	701-A	1169	
NYC&SL.....	G. F. D. 15-W	6117	Index Numbers 1090 to 1185.
PRR.....	73-E	3311	Item 405.
TP&W.....	155-A	312	
Wab.....	19308-E	7745	Items 3300, 3325.

For explanation of reference marks, see last page of this supplement

[fol. 303]

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C. T. C. 2094  
Ohio 2349

**SUPPLEMENT**  
TO  
Pa. P. U. C. 361  
P. S. C.-W. Va. 333

I. C. C. 4403

**CENTRAL TERRITORY RAILROADS  
TARIFF BUREAU**  
(H. R. Hinsch, Agent)

**SUPPLEMENT 84**  
TO

**FREIGHT TARIFF 245-H**

Cancel Supplement 83

Supplements 82, 86, 75, 82 and 84 and the following special supplements contain all changes.  
Supplements 76 and 77 contain only matter under suspension.  
Supplement 79—Suspension Notice—I: & S. Docket 6615 (Equalization of Rates at North Atlantic Ports).

**LOCAL, JOINT AND PROPORTIONAL RATES**

ON

**GRAIN AND GRAIN PRODUCTS**

AND OTHER COMMODITIES

as named on page 9 of tariff

FOR LIST OF ARTICLES TAKING GRAIN AND GRAIN PRODUCTS RATES, MINIMUM WEIGHTS AND RULES  
APPLYING IN CONNECTION THEREWITH, REFER TO SECTION 1 OF FREIGHT TARIFF 600-H,  
I. C. C. 4444, C. T. C. 2253, OHIO 2611, PA. P. U. C. 408, P. S. C.-W. VA. 376,  
ISSUED BY H. R. HINSCH, AGENT

FROM Stations in		TO	
ILLINOIS	NEW YORK	ALBANY, N. Y.	PHILADELPHIA, PA.
INDIANA	OHIO	BALTIMORE, MD	ROCHESTER, N. Y.
IOWA	PENNSYLVANIA	BOSTON, MASS.	SYRACUSE, N. Y.
KENTUCKY	WEST VIRGINIA	NEW YORK, N. Y.	UTICA, N. Y.
MICHIGAN	WISCONSIN	And other Eastern points in the United States named on pages 87 to 99, 109 and 110 of tariff, as amended	
MISSOURI			

ALSO  
**BASIS FOR RATES TO UNITED STATES AND CANADIAN PORTS FOR  
EXPORT, AS PROVIDED IN SECTION 2 OF TARIFF, AS AMENDED**

ALSO

**Joint Rail-Motor Rates**

to

Points served by the Boston & Maine Transportation Company

Governed, except as otherwise provided herein, by Official Classification I. C. C.-O. C. 65, C. T. C.-O. C. 65, Ohio-O. C.  
65, Pa. P. U. C.-O. C. 65, P. S. C.-W. Va.-O. C. 65, W. S. Flint, Agent, and by exceptions thereto, as indicated in Item 345  
of tariff.

ISSUED NOVEMBER 7, 1956

EFFECTIVE DECEMBER 15, 1956

Issued by  
H. R. HINSCH, Agent  
23 W. Madison St.,  
Chicago 2, Ill.



**AMEND** Alphabetical List of Destination Stations, shown on pages 80 to 88 of tariff, by the addition of the following:

**ALPHABETICAL LIST OF DESTINATION STATIONS SPECIFICALLY NAMED IN THIS TARIFF**

Station	STATION	Carrier	Pages	Station	STATION	Carrier	Pages
320	Denton.....Md.	B&E.....	158	175	Preston.....Md.	B&E.....	158
125	Hebron.....Md.	B&E.....	158	285	Queensdown.....Md.	B&E.....	158
230	McDaniel.....Md.	B&E.....	158	135	Vienna.....Md.	B&E.....	158
5	Ocean City.....Md.	B&E.....	158				

**EXPLANATION OF NOTES**

Note 20 cancels Note 20, page 16 of Supplement 52.

**APPLICATION OF RE-SHIPING OR PROPORTIONAL RATES FROM CHICAGO, JOLIET, KANKAKEE, MILWAUKEE, MANITOWOC, ETC.**

(a) Where reference is made to this Note, rates apply as re-shiping or proportional rates applicable on traffic reaching the re-shiping point via a rail or water transportation line that can furnish to the outbound carrier freight bill or like documentary evidence as to the origin of the traffic and rate paid to the re-shiping point. Rates also apply on through billed shipments not stopped in transit at re-shiping points subject to this application.

(b) Provided, that in no case shall the combination through rate to and from the re-shiping point via rail be less than the rate from the re-shiping point applicable on a shipment originating thereat to final destination, the difference necessary to protect such rate from the re-shiping point to be added to the re-shiping rate therefrom. (See Exception below.)

(c) In no case shall the combination through rate to and from the re-shiping point via rail be less than the single factor through commodity rate from original shipping point to final destination named herein, which shall be the minimum through rate, the difference necessary to protect such minimum through rate shall be added to the re-shiping rate from the re-shiping point. The provisions of Paragraph (c) will not apply in connection with application of Items 278 and 279 of tariff, as amended.

These rates are applicable on Ex-Lake shipments as of the date such shipments leave the lake port.

These rates are applicable on shipments which arrive at Chicago, Ill., by River or Canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

The Ex-Lake Grain and (or) Grain Product rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Milwaukee or Manitowoc via lake, also on Grain Products milled from Grain which arrives at these ports via lake. The Ex-Lake rates covered hereby are applicable as of the date shipments leave the respective points named herein.

The Ex-River or Ex-Canal Grain and (or) Grain Products rates will apply only on Grain and (or) Grain Products which arrive at Chicago, Ill., via river or canal, also on Grain Products milled from Grain which arrive at Chicago, Ill., via river or canal. The rates covered hereby are applicable as of the date from point of origin as shown on the shipping directions surrendered at Chicago, Ill.

These rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

**Exception.**—The provisions of paragraph (b) as to the application of the rate on shipments originating at the re-shiping point as minima will not apply in connection with shipments moving to Chicago, Ill., via River or Canal, nor on shipments of Malt and Malt Sprouts, C. L., originating at Jefferson Junction, Wis., nor on shipments of Corn and Corn Products, C. L., named in Item 279 of tariff, as amended, originating at NYC stations named in Item 279 of tariff, as amended. (D/A C1301-383.)

**GENERAL EXCEPTIONS TO APPLICATION OF RATES**

**Item 279 (New).**

**EXCEPTION TO APPLICATION OF RATES ON CORN AND PRODUCTS THEREOF**

Rates named in tariff, as amended, on Grain and Grain Products from:

Station Number	STATION	Station Number	STATION	Station Number	STATION	Station Number	STATION
8080 to 8220	NYC(W) West Kankakee.....Ill. to Morons.....Ill.						

will NOT apply on carload shipments of Corn and the following products produced from Corn:

- |   |  |
|---|--|
| Brewers' Flakes (not made from starch),                             | Feed, animal or poultry, prepared,   |
| Brewers' Meal (not made from starch),                               | Feed, corn cereal offal (not cereal food preparations and not for human consumption),                    |
| Corn Bran,  | Feed, flaked corn, toasted or not toasted (not a cereal food preparation and not for human consumption), |
| Corn Chop,  | Gluten Feed,   |
| Corn Dust,  | Gluten Feed, sweetened,  |
| Corn Feed (ground, not the product of starch or glucose factories), | Gluten Meal,   |
| Corn Flour,   | Grits (not made from starch),  |
| Corn Meal,  | Ground Corn,   |
| Corn Malt,  | Hominy,  |
| Corn Malt Sprouts,  | Hominy Feed,   |
| Corn Oil Cake (ground or unground),                                 | Hulled Corn,   |
| Corn Oil Meal,  | Mash, spent grain, dried, without or with not exceeding one per cent (1%) of Vitamin A added.            |
| Corn Screenings (whole or ground),                                  |  |
| Corn Skimmings,   |  |
| Cracked Corn,   |  |

when routed via Kankakee, Ill. and milled in transit. Combination rates will apply. (D/A C1301-383.)

For explanation of reference marks, see last page of this supplement.

[Vol. 305]


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Subject (except as otherwise provided by "GTR" and "GTY") to TARIFF OF INCREASED RATES AND CHARGES X-175-C, Agent H.R. Hinech's ICC 4679, CTC 2273, 111CC 662, PSC-NY 358, Ohio 2634, PaPUC 414, supplements thereto or successive, issues thereof and subject to increase in Rates and Charges, as provided in Item X-186 Series, page 2 of Supplement 116, and subject to increase in Rates and Charges, as provided in Item X-206 Series, page 2 hereof.

SUPPLEMENT		
TO		
<b>CTC 286</b> <b>111CC 172</b> <b>IndRC 213</b>	<b>MPSC 234</b> <b>PSC-NY 541</b> <b>Ohio 346</b>	<b>IOC 1169</b> <b>PaPUC 204</b> <b>PSC-Wya 135</b>



**THE NEW YORK CENTRAL RAILROAD COMPANY**  
 IN CONNECTION WITH  
 PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 6 OF TARIFF, AS AMENDED

**SUPPLEMENT 120**  
**TO**  
**FREIGHT TARIFF 701-A**

Supplements 26, 61, 113, 119 and 120 and the following Special Supplement contain all changes.  
 Supplement 20 (ex Parte 175) (Blanket 229).

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**Local, Joint and Proportional Freight Tariff**  
 NAMING RATES IN CENTS PER 100 POUNDS (EXCEPT AS NOTED)  
 ON  
**GRAIN AND GRAIN PRODUCTS**  
 AND OTHER ARTICLES AS DESCRIBED ON PAGES 5 AND 6 OF TARIFF  
 ALSO  
 FEED OR FEED INGREDIENTS, ANIMAL OR POULTRY  
 AS DESCRIBED IN RULE 2, PAGE 35 OF TARIFF, AS AMENDED  
 IN CARLOADS (Except as Noted)

FROM STATIONS ON	TO STATIONS IN		
<b>NEW YORK CENTRAL RAILROAD</b> (Stations in United States, Buffalo, N.Y., Clearfield, Pa., and West) And other Initial Carriers shown on Page 3 of tariff.	<b>ILLINOIS</b> <b>INDIANA</b> <b>IOWA</b> <b>KENTUCKY</b>	<b>MICHIGAN</b> <b>MISSOURI</b> <b>NEW YORK</b>	<b>OHIO</b> <b>PENNSYLVANIA</b> <b>WEST VIRGINIA</b> <b>WISCONSIN</b>

**ALSO MILEAGE RATES, SEE PAGES 551 AND 599 OF TARIFF**

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Governed, except as otherwise provided herein, by Official and Illinois Classification (CFC) and by exceptions in Agent H.R. Hinech's Tariff 130 Series, Agent C.W. Boin's Tariff 80 Series, and Agent R. G. Raasch's Tariff 80 Series, (see Rule 125 of tariff, as amended)

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**ISSUED FEBRUARY 19, 1957**

**EFFECTIVE MARCH 24, 1957**

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Issued by  
**R. T. WAITE,**  
 Manager Tariff Bureau  
 466 Lexington Avenue  
 NEW YORK 17, N. Y.

[fol. 306]

Item X-206-Cancels Item X-206, page 2 of Supplement 119.

Except as otherwise provided in connection with particular rates and charges and except as otherwise provided below, rates and charges in this tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-206. Agent H. R. Hirsch's ICC 4757, IICC 677, PSC-NY 577, Ohio 2586, CTC 2317, supplements thereto or successive issues thereof.

#### EXCEPTIONS

The provisions of this item will NOT apply.

- (a) On intrastate traffic moving between points, in, and transported wholly within, any state nor to rates or charges on intrastate traffic; nor
- (b) On interstate traffic via an interstate route on a given interstate shipment moving between points in the States of ILLINOIS and INDIANA, between which points there is an intrastate rate of the same amount applicable on a like shipment via any route wholly within the same state in any tariff on file with the Interstate Commerce Commission nor to rates or charges applicable in connection with said interstate shipment.

until authorized by letter-number supplements to Tariff of Increased Rates and Charges X-206, referred to above, which shall specify the increase applicable to such rates and charges, and which shall be filed with the Interstate Commerce Commission and State Commissions.

The form of this publication is permitted by authority of Interstate Commerce Commission, Permission 71234 of December 17, 1956.

#### EXPLANATION OF REFERENCE MARKS

Reference Mark	EXPLANATION
<div> <div> <div>+</div> <div>END</div> </div> <div> <div>B</div> <div>C</div> </div> </div>	<p>Increase.</p> <p>Rate applies only on Corn and Corn products, when milled-in-transit, and only as proportional rate to Kankakee, Ill., on traffic destined to the Western Termini of Eastern Trunk Lines and East thereof, as defined in Central Territory Railroads Tariff 8-J, Agent H. R. Hirsch's ICC 4822. Minimum weight 100,000 pounds. * Rate will not apply when movement beyond Kankakee, Ill., is routed via Chicago, Ill., and stations in the Chicago Switching District defined in Agent H. R. Hirsch's Freight Tariff 20-Y, ICC 706, IICC 580. Rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.</p>
<div> <div>Ⓢ</div> </div> <div> <div>C</div> </div>	<p>Will not apply from or to intermediate points. Departure from the terms of the amended Fourth Section of the Interstate Commerce Act is permitted by authority of the Interstate Commerce Commission 202nd Supplemental Fourth Section Order 17200 of January 30, 1957.</p>

B-Brought forward without change.

C-Change. Cancels prior explanation of this reference mark in tariff, as amended.

(THE END)


[fol. 307]

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For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see above



Subject (except as otherwise provided by "ICC" and "CIC") to TARIFF OF INCREASED RATES AND CHARGES X-175-C, Agent H.R. Hirsch's, ICC 4679, CTC 2273, 111CC 662, PSC-NY 358, Ohio 2534, PaPUC 416, supplements thereto or successive issues thereof and subject to increase in Rates and Charges, as provided in item X-196 Series, page 2 of Supplement 119, and subject to increase in Rates and Charges, as provided in item X-208 Series, page 2 hereof.

<b>SUPPLEMENT</b> TO					
CTC 286 111CC 172 IndRC 213	MPSC 224 PSC-NY 541 Ohio 346	ICC 1169 PaPUC 204 PSC-WVa 135			
 <p style="font-size: 1.2em; margin: 10px 0;">THE NEW YORK CENTRAL RAILROAD COMPANY</p> <p style="margin: 5px 0;">IN CONNECTION WITH</p> <p style="margin: 5px 0;">PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF, AS AMENDED</p>					
<b>SUPPLEMENT 121</b> TO <b>FREIGHT TARIFF 701-A</b> Cancels Supplement 120					
Supplements 26, 91, 115, 119 and 121 and the following Special Supplement contain all changes. Supplement 20 (Ex Parte 176) (Blanket 229).					
<b>Local, Joint and Proportional Freight Tariff</b> NAMING RATES IN CENTS PER 100 POUNDS (EXCEPT AS NOTED) ON <b>GRAIN AND GRAIN PRODUCTS</b> AND OTHER ARTICLES AS DESCRIBED ON PAGES 5 AND 6 OF TARIFF ALSO <b>FEED OR FEED INGREDIENTS, ANIMAL OR POULTRY</b> AS DESCRIBED IN RULE 2, PAGE 35 OF TARIFF, AS AMENDED IN CARLOADS (Except as Noted)					
<b>FROM STATIONS ON</b> <b>NEW YORK CENTRAL RAILROAD</b> (Stations in United States, Buffalo, N.Y., Clearfield, Pa., and West) And other Initial Carriers shown on Page 3 of tariff.	<b>TO STATIONS IN</b> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; vertical-align: top;">           ILLINOIS            INDIANA            IOWA            KENTUCKY         </td> <td style="width: 33%; vertical-align: top;">           MICHIGAN            MISSOURI            NEW YORK         </td> <td style="width: 33%; vertical-align: top;">           OHIO            PENNSYLVANIA            WEST VIRGINIA            WISCONSIN         </td> </tr> </table>		ILLINOIS INDIANA IOWA KENTUCKY	MICHIGAN MISSOURI NEW YORK	OHIO PENNSYLVANIA WEST VIRGINIA WISCONSIN
ILLINOIS INDIANA IOWA KENTUCKY	MICHIGAN MISSOURI NEW YORK	OHIO PENNSYLVANIA WEST VIRGINIA WISCONSIN			
ALSO MILEAGE RATES, SEE PAGES 551 AND 599 OF TARIFF					
Governed, except as otherwise provided herein, by Official and Illinois Classification (CFC) and by exceptions in Agent H.R. Hirsch's Tariff 130 Series, Agent C.W. Royn's Tariff 80 Series, and Agent R.G. Raasch's Tariff 80 Series (see Rule 125 of tariff, as amended)					
<b>ISSUED MARCH 11, 1957</b>		<b>EFFECTIVE APRIL 13, 1957</b> (Except as otherwise provided herein)			
Issued by <b>R.T. WAITE,</b> Manager Tariff Bureau, 466 Lexington Avenue, NEW YORK 17, N. Y.					

[fol. 308]

Item X-206 Cancels item X-206, page 2 of Supplement 118.

Except as otherwise provided in connection with particular rates and charges and except as otherwise provided below, rates and charges in this tariff, and in supplements thereto, are subject to Tariff of Increased Rates and Charges X-206. Agent H. R. Hirsch's ICC 4787, 111CC 677, PSC-NY 377, Ohio 2596, CTC 2317, supplements thereto or successive issues thereof.

#### EXCEPTIONS

The provisions of this item will NOT apply:

- (a) On intrastate traffic moving between points, in, and transported wholly within, any state, nor to rates or charges on intrastate traffic; nor
- (b) On interstate traffic via an interstate route on a given interstate shipment moving between points in the States of ILLINOIS and INDIANA, between which points there is an intrastate rate of the same amount applicable on a like shipment via any route wholly within the same state in any tariff on file with the Interstate Commerce Commission nor to rates or charges applicable in connection with said interstate shipment.

until authorized by letter-number supplements to Tariff of Increased Rates and Charges X-206, referred to above, which shall specify the increase applicable to such rates and charges, and which shall be filed with the Interstate Commerce Commission and State Commissions.

The form of this publication is permitted by authority of Interstate Commerce Commission. Permission 71234 of December 17, 1956.

#### EXPLANATION OF REFERENCE MARKS

Reference Marks	EXPLANATION
①	A Effective March 24, 1957. Authority to publish upon ten (10) days' notice granted by permission of the Interstate Commerce Commission 72000 of March 7, 1957.
②	① Rate applies only on Corn and Corn products, when milled-in-transit, and only as proportional rate to Kankakee, Ill., on traffic destined to the Western Terminal of Eastern Trunk Lines and East thereof, as defined in Central Territory Railroads Tariff 3-J, Agent H. R. Hirsch's ICC 4622. Minimum weight 100,000 pounds. Rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.
③	① Will not apply from or to intermediate points. Departure from the terms of the amended Fourth Section of the Interstate Commerce Act is permitted by authority of the Interstate Commerce Commission 202nd Supplemental Fourth Section Order 17200 of January 30, 1957.
□ (with number enclosed)	B REISSUED from supplement bearing the number enclosed within the square. See Rule 190.

A-Addition.

B-Brought forward without change.

C-Change. Cancels prior explanation of this reference mark in tariff, as amended.

(THE END)

For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see above.



**GENERAL FREIGHT TRAFFIC COMMITTEE — EASTERN RAILROADS**

ONE PARK AVENUE, NEW YORK 16, N. Y.

**DETERMINATION ADVICE**

The changes in rates, rules and regulations shown below are recommended.

When a carrier or carriers are specified herein this advice shall also embrace any other line or any joint route in which all of the carriers concur in the publication of a joint rate or arrangement.

When traffic matters covered by this determination advice involve tariffs issued by the Tariff Publishing Agents in Boston, Mass., New York, N. Y., and Chicago, Ill., they will also be understood to refer to all carriers interested in such tariffs unless the Tariff Publishing Agent in Boston, New York, or Chicago, as the case may be, is advised to the contrary within five (5) days from the date hereof.

Traffic matters covered hereby do not refer to Coal, Coke (the direct product of coal) or Iron Ore.

O. E. SCHULTZ, Chairman.

May 31, 1957.

Date:  
SUPPLEMENT NO. 1 TO  
DETERMINATION ADVICE NO. C1301-363

TRAFFIC EXECUTIVE ASSOCIATION—EASTERN RAILROADS,  
Meeting at Chicago, Ill., May 23, 1957.

Establish proportional rate of 5 cents per 100 lbs., on Corn and Corn Products, carloads, minimum weight 100,000 lbs. —

From: West Kankakee	Ill.	Misal	Ill.
Union	Ill.	Streator	Ill.
Hill	Ill.	Mills	Ill.
Reddick	Ill.	Losant	Ill.
Blair	Ill.	Priscilla	Ill.
Dwight	Ill.	McNabb	Ill.
Sunbury	Ill.	Granville	Ill.
Budd	Ill.	Moronts	Ill.

To: Kankakee Ill.

Subject to Ex Parte 206 increases.

for application on shipments destined to Central territory.

Subject to following conditions:

- 1 - Procurement of origin Fourth Section relief.
- 2 - Through rates from these stations to be non-applicable where combination rates are lower.
- 3 - Local rate in NYC RR Tariff No. 701 on Corn Grits from Kankakee, Ill., to Battle Creek, Mich., to be made non-applicable in connection with approved proportional rates.
- 4 - Approved proportional rate to be subject to milling in transit.
- 5 - Issued to meet water and highway competition.

O.E. SCHULTZ,  
Chairman.

Copies - Messrs:

H.R. Hinsch


H.W. Piekarski

ps

List No. 2 (C) - 1

Subject (except as otherwise provided by "xxx") to TARIFF OF INCREASED RATES AND CHARGES X-175-C, Agent N.R. Minisch's ICC 4673, CTC 2273, 111CC 662, PSC-NY 358, Ohio 2534, PaPUC 414, supplements thereto or successive issues thereof and subject to increase in Rates and Charges, as provided in item X-196 Series, page 2 of Supplement 122 and subject to increase in Rates and Charges, as provided in item X-206, page 2 of Supplement 122.

SUPPLEMENT		
TO		
<b>CTC 286</b> <b>111CC 172</b> <b>IndRC 213</b>	<b>MPSC 224</b> <b>PSC-NY 541</b> <b>Ohio 346</b>	<b>ICC 1169</b> <b>PaPUC 204</b> <b>PSC-WVa 135</b>



**THE NEW YORK CENTRAL RAILROAD COMPANY**

IN CONNECTION WITH  
 PARTICIPATING CARRIERS SHOWN ON PAGES 3 TO 5 OF TARIFF, AS AMENDED.

**SUPPLEMENT 126**  
**TO**

**FREIGHT TARIFF 701-A**

Supplements 26, 91, 122, 125, 126 and the following Special Supplement contain all changes  
 Supplement 20 (Ex Parte 175) (Blanket 229).

**Local, Joint and Proportional Freight Tariff**  
 NAMING RATES IN CENTS PER 100 POUNDS (EXCEPT AS NOTED)

ON

**GRAIN AND GRAIN PRODUCTS**  
 AND OTHER ARTICLES AS DESCRIBED ON PAGES 5 AND 6 OF TARIFF

ALSO

**Feed or Feed Ingredients, Animal or Poultry**  
 AS DESCRIBED IN RULE 2, PAGE 36 OF TARIFF, AS AMENDED  
 IN CARLOADS (Except as Noted)

FROM STATIONS ON	TO STATIONS IN			
<b>NEW YORK CENTRAL RAILROAD</b> (Stations in United States, Buffalo, N.Y., Clearfield, Pa., and West) And other Initial Carriers shown on page 3 of tariff.	<table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none; vertical-align: top;"> <b>ILLINOIS</b>  <b>INDIANA</b>  <b>IOWA</b>  <b>KENTUCKY</b> </td> <td style="width: 33%; border: none; vertical-align: top;"> <b>MICHIGAN</b>  <b>MISSOURI</b>  <b>NEW YORK</b> </td> <td style="width: 33%; border: none; vertical-align: top;"> <b>OHIO</b>  <b>PENNSYLVANIA</b>  <b>WEST VIRGINIA</b>  <b>WISCONSIN</b> </td> </tr> </table>	<b>ILLINOIS</b> <b>INDIANA</b> <b>IOWA</b> <b>KENTUCKY</b>	<b>MICHIGAN</b> <b>MISSOURI</b> <b>NEW YORK</b>	<b>OHIO</b> <b>PENNSYLVANIA</b> <b>WEST VIRGINIA</b> <b>WISCONSIN</b>
<b>ILLINOIS</b> <b>INDIANA</b> <b>IOWA</b> <b>KENTUCKY</b>	<b>MICHIGAN</b> <b>MISSOURI</b> <b>NEW YORK</b>	<b>OHIO</b> <b>PENNSYLVANIA</b> <b>WEST VIRGINIA</b> <b>WISCONSIN</b>		

**ALSO MILEAGE RATES, SEE PAGES 551 AND 599 OF TARIFF**

Governed, except as otherwise provided herein, by Official and Illinois Classification (CFC) and by Exceptions in Agent N.R. Minisch's Tariff 190 Series, Agent C.W. Boin's Tariff 90 Series and Agent R.G. Raasch's Tariff 80 Series (see Rule 125 of tariff, as amended).

This supplement contains Rates and Routes, subject to Reference Mark (C) that contravene the long-and-short-haul provisions of the Amended Fourth Section of the Interstate Commerce Act. Relief as to such departure is sought under Agent O.E. Schultz's Fourth Section Application 2386 of June 28, 1957.

<b>ISSUED JUNE 28, 1957</b>	<b>EFFECTIVE JULY 30, 1957</b>
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Issued by  
**R.T. WAITE,**  
 Manager Tariff Bureau,  
 466 Lexington Avenue,  
 NEW YORK 17, N. Y.

[fol. 311]

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## SECTION 3

GRAIN AND GRAIN PRODUCTS: AS PER LISTS REFERRED TO IN RULE 1, PAGE 35 OF TARIFF  
For Station FROM which rates apply, see Section 1 of tariff

FROM Station	Rate	Delivering Line	Route	FROM Station	Rate	Delivering Line	Route	FROM Station	Rate	Delivering Line	Route
TO BATTLE CREEK, MICH.											
Page 70 of tariff. A Change:											
NYC											
8080	11	NYC (M)	1								

## SECTION 4

CORN, AS PER GRAIN LIST IN SECTION 1 OF AGENT H.R. HINSCH'S FREIGHT TARIFF 600-N, ICC 4624

FROM	TO	RATE	Delivering Line	Route
Page 591 of tariff and 40 of Sup. 122. A Change:				
Blair.....Ill.	Kankakee.....Ill.	0 11 11 11 5	NYC (M)	1
Bloom.....Ill.				
Dwight.....Ill.				
Granville.....Ill.				
Lehigh.....Ill.				
Lostant.....Ill.				
McNabb.....Ill.				
Mills.....Ill.				
Missal.....Ill.				
Moronta.....Ill.				
Priscilla.....Ill.				
Reddick.....Ill.				
Smith Spur.....Ill.				
Streator.....Ill.				
Sunbury.....Ill.				
Union Hill.....Ill.				
Van's Siding.....Ill.				

## EXPLANATION OF REFERENCE MARKS

Reference Mark	EXPLANATION
A	Reduction.
B	Change in wording which results in neither increases nor reductions in charges.
11	Not subject to Tariffs of Increased Rates and Charges X-175-C and X-190-A, referred to on title page hereof.
11	Rate applies only on Corn and Corn Products, when milled-in-transit, and only as proportional rate to Kankakee, Ill., on traffic destined to Central Territory, and to the Western Terminal of Eastern Trunk Lines and East thereof, as defined in Central Territory Railroad Tariff 3-J, Agent H.R. Hinsch's ICC 4622. Minimum weight 100,000 pounds. Rates are subject to Transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.
11	Applies only on Oats, Corn (other than bakers', brewers', hominy or groats, also will not apply on Oats, flaked, granulated or refined), in bulk, earloads, minimum weight 100,000 pounds, except when car is loaded to full carrying capacity, actual weight will apply and only when routed via NYC (M) through Schneider, Ind., North Judson, Ind., to South Bend, Ind., thence NYC (M). Also will not apply in connection with the proportional rates named from stations Van's Siding, Ill. (Index 8100), to Moronta, Ill. (Index 8280), inclusive to Kankakee, Ill. on page 591 of tariff, as amended.
11	Will not apply from or to intermediate points, see Title Page. Departure from the terms of the amended Fourth Section of the Interstate Commerce Act, is sought under Agent O. E. Schult's Fourth Section Application 22ed of June 28, 1907.
11	Issued to meet motor truck and water competition.

A-Addition.

B-Brought forward without change.

C-Changes prior explanation of this reference mark in tariff, as amended.

(THE END)

For Explanation of Abbreviations and Notes, see Section 2 of tariff, as amended; Reference Marks, see above.

Subject to TARIFF OF INCREASED RATES AND CHARGES X-304, Agent H. R. Hinech's ICC 4757, CTC 3317, PSC-NY 377, supplements thereto or successive issues thereof.

**PSC-NY 823**  
Cancels PSC-NY 653

**CTC 463**  
Cancels CTC 380

**ICC 1798**  
Cancels ICC 1494



# THE NEW YORK CENTRAL RAILROAD COMPANY

## FREIGHT TARIFF 10705-E

CANCELS FREIGHT TARIFF 10704-D

### LOCAL FREIGHT TARIFF

RULES AND CHARGES GOVERNING  
TRANSIT PRIVILEGES

ON

## GRAIN, GRAIN PRODUCTS

AND

OTHER COMMODITIES

IN CARLOADS

AT

BUFFALO, N. Y.  
BLACK ROCK (BUFFALO), N. Y.  
SUSPENSION BRIDGE, N. Y.

This tariff also applies on Intrastate Traffic

## TRANSIT—GRAIN

ISSUED FEBRUARY 5, 1957

EFFECTIVE MARCH 15, 1957

Issued by

R. T. WAITE,  
Manager Tariff Bureau,  
466 Lexington Avenue,  
NEW YORK 17, N. Y.



# RULES AND OTHER GOVERNING PROVISIONS

Item	SUBJECT	RULE
610	Cancellation of Tonnage	<p>To the end that there shall not be in the possession of the transit house uncanceled inbound freight bills or inbound tonnage credits, that do not represent Grain, Grain Products and other commodities actually on hand, millers and maltsters must surrender for cancellation to the Eastern Weighing and Inspection Bureau:</p> <ol style="list-style-type: none"> <li>1. With the submission of outbound shipping directions, sufficient representative freight bills of this Company to cover products forwarded by rail (transit). (See Items 810 and 820)</li> <li>2. Daily, sufficient representative freight bills of this Company, or local tonnage credits, to cover Grain, Grain Products and other commodities disposed of locally or forwarded by rail (non-transit).</li> <li>3. Daily, sufficient representative freight bills of this Company, and local tonnage credits, to cover invisible loss.</li> </ol>
620	Excess Inbound Weight	<p>Subject to Items 610 and 800, any excess weight shown on the inbound freight bills over the weight reshipped shall stand credited and may be applied in accordance with these rules against subsequent shipments.</p>
630	Rates to Apply	<p>(a) The through rates to be applied from point of origin to final destination will be the lawfully published rate in effect via the transit point at the time of initial shipment of the commodity covered by the inbound billing matched against the outbound shipment (see Items 760, 770, 810 and 820), except that where the commodity covered by the inbound billing matched against the outbound shipment consists of Grain, Grain Screenings or Soybeans, the through rate to be applied on the outbound shipment will be that applicable to Grain Products in effect at the time the Grain, Grain Screenings or Soybeans originated. (See Items 640 and 650)</p> <p>(b) When the inbound commodity originates at a point from which there is applicable via the transit point no joint through rate on the inbound commodity to the final destination of the outbound commodity but from which a combination through rate applicable via the transit point can be constructed on a basing point, directly intermediate from point of origin to transit point, the rate on the inbound and outbound commodities will be the rate applicable on the inbound commodity from the point of origin, to the rate basing point directly intermediate between the point of origin of inbound commodity and the transit point, in effect on date of shipment of inbound commodity from point of origin, plus the lawfully applicable rate on the commodity covered by the inbound billing matched against the outbound shipment (see Items 760, 770, 810 and 820), from the rate basing point directly intermediate between the point of origin of the inbound commodity and the transit point in effect on date of shipment from point of origin of the inbound commodity plus the transit charge, except that where the commodity covered by the inbound billing matched against the outbound shipment consists of Grain, Grain Screenings or Soybeans, the rate to be applied from the rate basing point will be that applicable to Grain Products in effect on date of shipment from point of origin. (See Items 650 and 660)</p> <p>(c) When a combination rate applicable via the transit point is constructed on a rate basing point located between the transit point and final destination, the rate on the through movement will be that applicable on the inbound commodity from point of origin to such rate basing point, plus the rate lawfully applicable on the outbound commodity therefrom to final destination at time of shipment from point of origin, except that when the inbound commodity consists of Grain, Grain Screenings or Soybeans, the rate to be applied to the rate basing point will be that applicable to Grain Products in effect at time the Grain, Grain Screenings or Soybeans originated plus the transit charge.</p> <p>(d) In no case shall the rate on a shipment be less than the lawful rate from point of origin to the transit point, plus the transit charge, nor less than the lawful rate from the transit point to final destination, plus the transit charge, whichever is higher.</p>
640		<p>When the commodity covered by the inbound billing consists of Copra Meal produced from copra at a prior transit point, the through rate to be assessed will be that applicable on copra or copra meal (whichever is higher) from point of origin or point of importation (as the case may be) of the copra, to the final destination of the outbound product in effect on date of shipment of the copra from point of origin or point of importation (as the case may be) plus the transit charge, except where there are no commodity rates in effect on copra, then copra meal rates will apply.</p>
650	Exceptions to Item 630 (Continued on next page)	<p>When inbound billing for Cake, corn oil (ground or unground); Cake, soybean oil (not cereal food preparation and not for human consumption); Feed, soybean; Meal, corn oil; Meal, soybean, ground or in flake form (not cereal food preparation and not for human consumption); and Meal, soybean oil, ground or in flake form (not cereal or food preparation and not for human consumption); milled from Corn or Soybeans, as the case may be, under transit tariffs lawfully on file with the Interstate Commerce Commission is surrendered against outbound shipments to destinations in Central, Trunk Line (including Trunk Line Arbitrary Territory) and New England Territories (see Item 50), the following will apply:</p> <ol style="list-style-type: none"> <li>(a) When a through one-factor commodity rate on grain products is in effect via the transit point from point of origin of the corn or soybeans to final destination of the outbound shipment, such through one-factor commodity rate in effect on date of shipment of the corn or soybeans from point of origin, plus transit charge, if any, will apply.</li> <li>(b) In the absence of a through one-factor commodity rate on grain products as referred to in paragraph (a) above, rate to apply will be that applicable on the inbound shipment of the corn oil cake or meal or soybean oil cake or meal, as described in paragraph (a), from origin of the corn or soybeans to transit point or rate basing point directly intermediate from point of origin of the corn or soybeans to transit point, plus the lawfully applicable proportional or reshipping commodity rate (not class or column rating) on corn oil cake or meal; soybean oil cake or meal or soybean feed as described, from such transit point or rate basing point to final destination of the outbound shipment in effect on date of shipment of corn or soybean from point of origin, plus transit charge.</li> </ol>

For Explanation of Abbreviations and Reference Marks, see concluding pages of this tariff.

[fol. 314]

**SECTION 1**  
**THE PENNSYLVANIA RAILROAD COMPANY**  
**FREIGHT TARIFF 200-8**

3rd Revised Page 13  
 Cancels  
 2nd Revised Page 13

Ill.C.C. 205    I.R.C. 320    M.P.S.C. 255    Ohio 710    Pa.P.U.C. 1615    V.Va. 320    I.C.C. 2980

**-(GENERAL RULES AND REGULATIONS GOVERNING TRANSIT PRIVILEGES  
 APPLICABLE ONLY AT STATIONS MAKING SPECIFIC REFERENCE HERETO**

Rule No.	SUBJECT	EXPLANATION
25	RATES AND CARLOAD MINIMUM WEIGHT	<p>Except as otherwise provided:</p> <p align="center"><b>"DOMESTIC TRAFFIC"</b></p> <p>The through rate to be applied on a domestic shipment will be the lawfully published through rate on the inbound or outbound commodity, whichever is higher from original point of shipment to final destination in effect at time of initial shipment from point of origin. In no case shall the through rate on a domestic shipment from point of origin to final destination, plus transit and other charges provided in this tariff, be less than the rate from point of origin to the transit point, plus transit and other charges provided in this tariff, nor less than the rate from transit point to final destination, plus transit and other charges provided in this tariff, whichever is higher.</p> <p align="center"><b>"IMPORT TRAFFIC"</b></p> <p>The through rate to be applied on an import shipment will be the lawfully published import rate applicable from port of entry to final destination or the import rate from port of entry to transit station, whichever is higher, in effect on date of shipment from port of entry, plus the transit and other charges provided in this tariff.</p> <p align="center"><b>"EXPORT TRAFFIC"</b></p> <p>The through rate to be applied on an export shipment will be the lawfully published through rate applicable upon export shipment from point of origin to point of exportation, or the export rate from transit point to point of exportation, whichever is higher, in effect at time of shipment from point of origin, plus the transit and other charges provided in this tariff.</p> <p align="center"><b>① ALTERNATING RATES AND MINIMUM WEIGHTS</b></p> <p>When shipments are subject to alternating rates and minimum weights, the following will govern:</p> <p>(a) When the actual transit weight of the outbound shipment exceeds the weight on which charges were based on one inbound shipment, more than one inbound freight bill may be surrendered as an offset against the outbound shipment, but each portion of the outbound shipments, as applied from each such inbound freight bill, will be charged the carload rate from origin to destination that would have been applicable on basis of the weight of each inbound shipment.</p> <p>(b) When the actual transit weight of the outbound shipment is less than the weight covered by the inbound freight bill surrendered as an offset, the transit weight will be charged the carload rate that would have been charged for such outbound weight from origin to destination.</p> <p>(c) The entire outbound shipment will be subject to the highest carload minimum weight for any of the rates charged and any deficiency in the minimum weight will be treated as non-transit weight and charged the lawfully published carload rate from transit point to final destination in effect at time of shipment from the transit point on the lowest rated commodity in the outbound car.</p>
Rules 30, 35, 40, 45 and 50 transferred to Original Page 13-A.		
<p>For explanation of abbreviations, see page 3.</p> <p>① Reduction.</p> <p>① Not applicable on milling, mixing, malting and other transit privileges on Grain and Grain Products.</p>		
C.R. 258		C.S. 270

[fol. 315]

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ISSUED DECEMBER 28, 1956.

(Printed in U.S.A.)

(1600)

EFFECTIVE FEBRUARY 1, 1957.

H. F. SUTTER, Manager - Tariff Bureau,  
 15 North 32nd Street, PHILADELPHIA, PA.



**RULES AND OTHER GOVERNING PROVISIONS**

**SPECIAL RULES AND REGULATIONS**

**SECTION 4—NYC(O)—PART 1**

(Section 4 applies only at stations shown on pages 5 to 7, making reference hereto)  
**THE PROVISIONS OF THE GENERAL RULES AND REGULATIONS OF SECTION 1  
 TOGETHER WITH THOSE IN THIS SECTION HAVE APPLICATION**

Item	SUBJECT	APPLICATION
800	Provisions of Application	These rules, when the conditions hereinafter stated are observed, and provided the outbound product (except as stipulated in special items provided under Part 2 of this section) is forwarded via the NYC(C) (or via NYC(W) when Transit privilege is accorded at Danville, Ill.), in carloads, will apply to shipments of commodities referred to in Item 250, under the caption "When inbound freight bills are surrendered for:" and hereinafter referred to as "Grain," when consigned (in straight carloads) to Mills or Malt Houses located at points reached by the rails of the NYC(C) intermediate between points of origin of the Grain and final destination of the Product. (See Item 870.)
805	Eligible Commodities	<p>The following Grain will be eligible to receive the milling or malting-in-transit privilege, viz.:</p> <p>(A) Grain from St. Louis, Mo., via East St. Louis, Ill., and the NYC(C). (C) Grain originating on foreign roads on which NYC(B), NYC(C), NYC(E), NYC(K), NYC(M), NYC(W), NYC(WS), P&amp;LE receive their local, joint or proportional rate from junction point with connecting lines. (Except as specifically provided for in special items in Part 2 of this section.)</p> <p>(B) Grain originating at points on NYC(B), NYC(C), NYC(E), NYC(K), NYC(M), NYC(W), NYC(WS), P&amp;LE.</p> <p>(D) Grain covered by special provisions hereinafter made.</p> <p>(E) Grain originating on the B&amp;O (Dayton &amp; Union Branch), when the product is destined to a point described in Item 905, Sections (A) to (I), both inclusive, except as described in Section (O).</p> <p>(F) Except as otherwise provided, specific items in Section 4, Part 2, as amended, applying from stations on the NYC(C), NYC(M) or NYC(W) will also apply on traffic originating at stations on connecting lines not otherwise specifically provided for, when delivered to the NYC(C), NYC(M) or NYC(W) at stations named in the item, subject to the NYC(C), NYC(M) or NYC(W) receiving their local, joint or proportional rate from junction point with connecting line, plus milling-in-transit charge as per Item 810 and penalty charge, if any, provided for in the item.</p>
810	Transit Charge	<p>(a) Except as provided in paragraph (b) the milling or malting-in-transit charge shall be one (1) cent per 100 pounds, but not less than \$8.63 per car on the inbound shipment, which shall be in addition to the through rate; except on Mash, Spent Grain, dried, without or with not exceeding 1% of Vitamin A added, carloads, also on Gluten, carloads, the transit charge shall be one (1) cent per 100 pounds but not less than \$8.63 per car on the outbound shipment, which shall be in addition to the through rate. (See Exception.)</p> <p>(b) On shipments moving on proportional rates published in WTL Tariff 332-E, Agent W. J. Prueter's ICC A-3866, when originating at points beyond Omaha, Nebraska or Kansas City, Mo., transited at Marion, Ohio, when destined to points beyond Cincinnati, Ohio, south of the Ohio River, the transit charge will be one (1) cent per 100 pounds, but not less than \$8.63 per car on the inbound shipment and an additional charge of 4 cents per 100 pounds will also be made which will be in addition to the through rate and will accrue to the New York Central Railroad Company.</p> <p><b>Exception</b>—Will not apply on commodities accorded transit privileges at Bloomington, Champaign, Danville, Pana or Paris, Ill.</p>
815		<u>The through rate to be applied on the inbound commodity (except that covered by Item 805 (c) and its product shall (except in the instances noted hereafter), be the lawfully published rate through on the inbound commodity or the product, whichever is higher, from the original point of shipment to final destination, in effect at time of initial shipment from point of origin applicable according to the inbound billing which these rules permit to be matched against the outbound shipment, plus the transit charge named in Item 810 of tariff, except that where the commodity covered by the inbound billing matched against the outbound shipment consists of Soybeans the through rate to be applied on the outbound shipment will be that applicable to Grain Products in effect at the time the Soybeans originated, plus the transit charge. (See Items 240, 865 (1) and Exceptions in Items 845 and 860.)</u>
820	Rates (Continued on next page)	When the inbound commodity (except that covered by Item 805 (c)) originates at a point from which there is applicable via the transit point no joint through rate on the inbound or outbound commodity to the final destination of the outbound commodity but from which a combination through rate, applicable via the transit point, can be constructed on a basing point, directly intermediate from point of origin to transit point, the rate on the inbound and outbound commodities will (except in the instances noted hereafter) be the rate applicable on the inbound commodity from the point of origin to the rate basing point directly intermediate between the point of origin of the inbound commodity and the transit point, in effect on date of shipment of the inbound commodity from point of origin plus the lawfully applicable local, joint, reshipping or proportional rate on the inbound or outbound commodity, whichever is higher, from the rate basing point directly intermediate between the point of origin of the inbound commodity and the transit point, in effect on date of shipment from point of origin of the inbound commodity, plus the transit charge named in Item 810, except that where the commodity covered by the inbound billing matched against the outbound shipment consists of Soybeans the rate to be applied from the rate basing point will be that applicable to Grain Products in effect on date of shipment from point of origin, plus the transit charge. (See Item 865 (1) and Exception in Item 845.)

For Explanation of Technical Terms, Abbreviations and Reference Marks, see concluding pages of this tariff.

[fol. 316]

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Underscoring ours 316



FOR PRECEDING ITEM (315) SEE PAGE 19.

## SECTION 2

SPECIFIC RULES GOVERNING THE FOLLOWING PRIVILEGES  
CLEANING, CLIPPING, DRYING, GRADING, MIXING, SACKING, STORING OR TREATING OF GRAIN  
FOR GENERAL RULES AND REGULATIONS, SEE SECTION 1, PAGES 15 TO 19

Item	SUBJECT	EXPLANATION																																																						
	APPLICATION AND DEFINITION OF TRANSIT PRIVILEGE	<p>EXCEPT AS OTHERWISE PROVIDED:</p> <p>(A) The transit rules as contained in Section 2, will apply at all stations on the NYC&amp;StLRR, as named on pages 6 to 11 (See Exceptions 1 and 2 below).</p> <p>(B) GRAIN, when in carloads, may be stopped for unloading into elevators, or warehouses, hereinafter termed transit houses, for the purpose of CLEANING, CLIPPING, DRYING, GRADING, MIXING, SACKING, STORAGE OR TREATING; and the Grain, or its equivalent as hereinafter set forth subsequently reforwarded to destinations beyond the transit point, subject to the rules provided herein.</p> <p>(C) Wherever the term "Grain" appears in this tariff it should be understood to mean all of the Commodities named in Section 2 of Agent H.R. Hinsch's Tariff 600-H, I.C.C. 4644, Ill. C.C. 656, I.R.C.D-901, Ohio 2511, P.S.C.N.Y. 353, Pa. P.U.C. 408, N.Y.C. &amp; St.L.R.R.-P.T. 2027-H. (SEE NOTE A).</p> <p>(File 5134-L-30; L-383) (Inf. Cir. 24954-32709)</p> <p>NOTE A - The term "Screenings" as used in Section 2 of Agent H.R. Hinsch's Tariff 600-H, I.C.C. 4644, Ill. C.C. 656, I.R.C.D-901, Ohio 2511, P.S.C.N.Y. 353, Pa. P.U.C. 408, N.Y.C. &amp; St.L.R.R.-P.T. 2027-H, means grain screened from the original grain. Screenings from different kinds of grain may be mixed and the mixture forwarded against any one kind of grain entering into the mixture.</p> <p>(Inf. Cir. 24954-32709) (File 5134-L-383)</p>																																																						
		<p>EXCEPTIONS</p> <p>(1) The rules in section 2 will not apply in connection with transit privileges at the following points:</p> <table><thead><tr><th>I.C.C.</th><th>Ill. C.C.</th><th>I.R.C.</th><th>P.S.C. N.Y.</th><th>N.Y.C. &amp; St.L.R.R. G.F.D.</th><th>Agents No.</th><th>Issued By</th><th>Applying at</th><th>Description</th></tr></thead><tbody><tr><td>6069</td><td>.....</td><td>.....</td><td>1251</td><td>103-U</td><td>.....</td><td>N.Y.C. &amp; St. L.R.R.</td><td>Buffalo. . . N.Y.</td><td>Transit privileges on Grain and Soybeans.</td></tr><tr><td>4653</td><td>657</td><td>.....</td><td>.....</td><td>867-T</td><td>413-T</td><td>H.R. Hinsch.</td><td>Chicago. . . Ill.</td><td>Transit privileges on Grain and Soybeans.</td></tr><tr><td>4318</td><td>603</td><td>.....</td><td>.....</td><td>1176-C</td><td>323-D</td><td>H.R. Hinsch.</td><td>Alton. . . Ill. E. St. Louis. Ill. Madison. . . Ill. Granite City. . . Ill.</td><td>Transit privileges on Grain and Soybeans.</td></tr><tr><td>4640</td><td>654</td><td>.....</td><td>.....</td><td>935-R</td><td>634-D</td><td>H.R. Hinsch.</td><td>Peoria . . . Ill.</td><td>Transit privileges on Grain and Soybeans.</td></tr><tr><td>4522</td><td>637</td><td>D-872</td><td>.....</td><td>931-G</td><td>645-C</td><td>H.R. Hinsch.</td><td>Bloomington. Ill. Gibson City. Ill.</td><td>Transit privileges on Grain and Soybeans.</td></tr></tbody></table> <p>TRAFFIC ORIGINATING ON CHICAGO &amp; EASTERN ILLINOIS RAILROAD COMPANY.</p> <p>(2) On traffic originating at stations on the CA&amp;EIR, the rules contained in Section No. 2 will apply only when the outbound shipment from the transit point is forwarded to N.Y.C. &amp; St.L., Stations Fairview, Pa. and east via The N.Y.C. &amp; St.L. or to Stations on connecting lines via Buffalo, N.Y., when moving via the N.Y.C. &amp; St.L. to Buffalo, N.Y., also to stations in Trunk Line and New England Territories (See Item 205) on or reached via The Pennsylvania R.R. when moving via N.Y.C. &amp; St.L.R.R., Ashtabula, Ohio or Cleveland, Ohio, Pennsylvania R.R. also Stations on the Western Maryland R.R. and Reading Co. when moving via N.Y.C. &amp; St.L. Pittsburgh Jct., Ohio, P. &amp; W. V.R.R., Connellsville, Pa.</p> <p>(File 5134-L-310; 5308-A-533)</p>	I.C.C.	Ill. C.C.	I.R.C.	P.S.C. N.Y.	N.Y.C. & St.L.R.R. G.F.D.	Agents No.	Issued By	Applying at	Description	6069	.....	.....	1251	103-U	.....	N.Y.C. & St. L.R.R.	Buffalo. . . N.Y.	Transit privileges on Grain and Soybeans.	4653	657	.....	.....	867-T	413-T	H.R. Hinsch.	Chicago. . . Ill.	Transit privileges on Grain and Soybeans.	4318	603	.....	.....	1176-C	323-D	H.R. Hinsch.	Alton. . . Ill. E. St. Louis. Ill. Madison. . . Ill. Granite City. . . Ill.	Transit privileges on Grain and Soybeans.	4640	654	.....	.....	935-R	634-D	H.R. Hinsch.	Peoria . . . Ill.	Transit privileges on Grain and Soybeans.	4522	637	D-872	.....	931-G	645-C	H.R. Hinsch.	Bloomington. Ill. Gibson City. Ill.	Transit privileges on Grain and Soybeans.
I.C.C.	Ill. C.C.	I.R.C.	P.S.C. N.Y.	N.Y.C. & St.L.R.R. G.F.D.	Agents No.	Issued By	Applying at	Description																																																
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255	RATES	<p>The through rate to be applied to transit Grain shall be the lawfully published rate through from the original point of shipment to final destination in effect via transit point at the time of initial shipment from point of origin applicable to the Commodity covered by inbound billing which these rules permit to be matched against outbound shipments. (SEE ITEMS 65, 70, PARAGRAPH (C) OF ITEM 260 ALSO ITEMS 275 TO 285).</p> <p>NOTE - In the instance of Oat Clippings matched against inbound Oats, the through rate to apply shall be the Grain Product rate, subject to the minimum weight applicable to Oat Clippings.</p>																																																						

[fol. 318] Statement of Rates from Kankakee Belt Line  
of N.Y.C. to Chicago and Kankakee omitted from the  
record here. Printed at page 119.

**STATEMENT OF GRAIN PRODUCTS RATES FROM WESTERN ORIGINS  
TO NEW YORK, NEW YORK (DOMESTIC)**

FROM	Group	(X-196)	(X-206) 12-28-56
Ashtabula, Ohio	66 1/2	43 1/2	45 1/2
Cleveland, Ohio	71	48	50 1/2
Toledo, Ohio	78	49 1/2	52
Wauseon, Ohio	84	52 1/2	55
Bryan, Ohio	85	52 1/2	55
Edgerton, Ohio	87	52 1/2	55
Waterloo, Ind.	90	56	59
Kendallville, Ind.	92	56	59
Elkhart, Ind.	96	62 1/2	65 1/2
La Porte, Ind.	98	64	67
Porter, Ind.	99	64	67
Schneider, Ind.	100-B 100-A	L-66 P-49 1/2	L-69 1/2 P-52
Kankakee, Ill.	100-B 100-A	L-66 P-49 1/2	L-69 1/2 P-52
Goodrich, Ill.	100-F	① 54 1/2	② 57 1/2
Dwight, Ill.	100-G	① 54 1/2	② 57 1/2
Streator, Ill.	100-K	① 54 1/2	② 57 1/2
TO Moronts, Ill.	100-K	① 54 1/2	② 57 1/2

① - Rate based on 5¢ (X-196) to Kankakee thence 49 1/2¢ (X-196) beyond, effective 12-15-56.

② - Rate based on 5 1/2¢ (X-206) to Kankakee thence 52¢ (X-206) beyond, effective 12-28-56.

**TARIFF AUTHORITY:**

Agent H. R. Hinsch's I.C.C. No. 4403  
N.Y.C. Tariff 701-A, I.C.C. No. 1169

L=Local Rate  
P=Proportional Rate



**Comparison of Corn vs. Corn Products Rates From Moronts, Ill.,  
(NYC) to Eastern Destinations on Domestic Traffic**

<b>TO: (On NYC RR)</b>	<b>Whole Corn Rates (X-206)</b>	<b>Corn Products Rates Eff. 12-15-56 (X-206)</b>
New York, N. Y.	75 1/2	57 1/2
Boston, Mass.	77 1/2	59 1/2
Albany, N. Y.	73 1/2	55 1/2
Utica, N. Y.	70 1/2	52 1/2
Syracuse, N. Y.	69	51
Rochester, N. Y.	69	51
Buffalo, N. Y.	64	45 1/2
<u>(On P.R.R. R.R.)</u>		
New York, N.Y.	75 1/2	57 1/2
Philadelphia, Pa.	73 1/2	55 1/2
Harrisburg, Pa.	72 1/2	54 1/2
Altoona, Pa.	67 1/2	49 1/2
Pittsburg, Pa.	64	45 1/2
<u>(On Erie RR)</u>		
New York, N.Y.	75 1/2	57 1/2
Goshen, N.Y.	75 1/2	57 1/2
Binghamton, N. Y.	69	51
Bath, N.Y.	69	51
Attica, N.Y.	69	51
Buffalo, N.Y.	64	45 1/2

**TARIFF AUTHORITY:**

Agent Hinsch's I.C.C. No. 4403  
Agent Hinsch's I.C.C. No. 3490

Agent Hinsch's I.C.C. No. 4499  
NYC Tariff 701-A, I.C.C. 1169

[fol. 321]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

**PROTEST OF A. L. MECHLING BARGE LINES, INC. AGAINST  
APPLICATION FOR FOURTH SECTION RELIEF—Filed July  
18, 1957**

**Fourth Section Application No. 33955, E. R. No. 2386**

**Tariff Reference: Supp. No. 126, N.Y.C. Tariff No. 701-A,  
R. T. Waite, I.C.C. No. 1169, Page No. 2; Supp. 84,  
H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403; Supp. 38,  
H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499**

**Proposed Effective Date: July 30, 1957**

**Commodity: Corn and Corn Products**

**From: Points on New York Central Railroad west of Kan-  
kakee, Illinois**

**To: Kankakee, Illinois for Transit to destinations in Cen-  
tral, Trunkline, and New England Territories**

**Rate: Proportional of 5¢ (subject to Ex Parte 206), plus  
proportionals to eastern destinations**

**A. L. Mechling Barge Lines Inc., by: Edward B.  
Hayes, Registered Practitioner, 135 South La Salle  
Street, Chicago 3, Illinois.**

[fol. 322]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

**PROTEST AGAINST APPLICATION FOR FOURTH SECTION RELIEF**

**Protestant, A. L. Mechling Barge Lines Inc., respectfully  
protests against the Application for Fourth Section Relief,  
I.C.C. No. 33955, E. R. 2386 filed by the Traffic Executive  
Association-Eastern Railroads in connection with Supple-  
ment No. 126, New York Central Railroad Company Tariff  
No. 701-A, I.C.C. No. 1169, and in support of its protest,  
shows the following:**

I. Protestant is a common carrier by water on the Illinois Waterways holding Interstate Commerce Commission Certificate of Authority No. W-630 and Illinois Commerce Commission Certificates of Public Convenience and Necessity, is and has been a carrier of substantial amounts of corn from Spring Valley, La Salle, Ottawa, Seneca and Morris, Illinois to Chicago, Illinois, and is one of the water carriers named as a competing water carrier in Fourth Section Application E. R. No. 2386, I.C.C. No. 33955, accompanying Supplement No. 126.

[fol. 323] II. The rates for which Fourth Section relief is now sought are rates of New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169, and supplements, and are designed to establish and maintain a proportional rate of 5¢ per cwt. (subject to Ex Parte 206) for corn and corn products from points on the New York Central Railroad west of Kankakee, Illinois to Kankakee, Illinois in transit to destinations in Central, Trunkline, and New England Territories at the proportionals established for many years from Kankakee, Illinois to these points. Related changes here protested were made effective December 15, 1956, in Supplement 84 to Agent H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403, and Supplement 38 to Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499, to permit the combination of the proportionals into aggregate rates to the eastern destinations without protecting the local rate from Kankakee, even though the combination was lower than the local rate from Kankakee and from points in Indiana. It is admitted by the railroads that the aggregates of these proportional rates will constitute departures from the Fourth Section and in Fourth Section Application, E.R. No. 2386, I.C.C. No. 33955, the approval of the Commission is sought for [fol. 324] these departures.

III. The 5½¢ rate presently is in effect under Section 4 of Supplement 122 to NYC Tariff No. 701-A, except that it is not under that supplement available for shipments destined to points in Central Territory. The rates originally were filed under Supplement No. 114, which became effective December 15, 1956. Subsequently Supplement No. 120



was filed to exclude their application to shipments routed via Chicago. Before it became effective, however, Supplement No. 120 was superseded by Supplement No. 121, in order to make the rate again available for shipments routed via Chicago. Supplement No. 122 later replaced Supplement 121. It is admitted in the application for Fourth Section relief filed herein that all these supplements contain or contained Fourth Section departures and that the Interstate Commerce Commission has not granted any authorization for such departures. All such supplements, including Supplement No. 122 presently in effect, therefore were promulgated in violation of Section 4 of the Interstate Commerce Act and the rate promulgated therein was and is illegal. Supplements No. 122 to NYC Tariff 701-A, [fol. 325] 84 to H. R. Hinsch's Tariff 245-H, and 38 to H. R. Hinsch's Tariff 535-C should therefore be withdrawn and the rates in effect prior to December 15, 1956, subject to Ex Parte 206, should be restored, pending hearing on Fourth Section Application No. 33955. The Commission has plenary power under Section 15(1) to order such action by the respondent railroads where the violation of the Act is admitted as it is here, and the Commission is hereby requested to enter such an order.

IV. The protested rate is urged in the Fourth Section Application as necessary to meet truck-barge competition, and is estimated in the application to involve a maximum diversion by the railroad to its rail transportation and from barge transportation of 6,000,000 bushels of corn annually. Protestant, on information and belief, denies the allegation in the application that no corn had moved by New York Central from stations west of Kankakee prior to December 15, 1956.

Moreover, rates for the movement from the points west of Kankakee to Kankakee prior to the effective date of Supplement No. 114 (December 15, 1956), ranged from 14.5¢ to 23¢, and no allegations or showing of any sort are made in the Fourth Section Application that the proposed reduction to from 24% to 38% of the previously existing rates [fol. 326] will be compensatory to the railroad, or that such reductions would not actually produce a deficit, or that the

amount of corn carried eastward by the railroads from Chicago and Kankakee would be increased sufficiently over the amounts now carried to compensate for the deficits incurred under the  $5\frac{1}{2}\text{¢}$  rate to Kankakee.

Furthermore, since the rate is applicable to corn going to eastern points via Chicago and the proportional rate from Chicago to such points is the same as the proportional rate from Kankakee to such points, the New York Central Railroad is, in effect, offering transportation from the points west of Kankakee to Chicago at a rate of  $5\frac{1}{2}\text{¢}$  on that part of the corn which is carried to the eastern destinations from Chicago on the New York Central Railroad's own lines—and even with respect to grain carried to eastern destinations from Chicago on other lines the New York Central under said protested supplements is carrying the grain from the points west of Kankakee to Chicago for the  $5\frac{1}{2}\text{¢}$  rate (unless it is receiving a division of the Kankakee proportional from the carrier making the eastward haul from Chicago as to which it neither makes nor offers to make any showing). Receipt of such division [fol. 327] has not been alleged in Fourth Section Application No. 33955 and, if it were alleged, it would be clear that the eastbound carrier was carrying ex-rail grain east from Chicago at a rate lower than that contemporaneously charged for its service east from Chicago on ex-barge grain, in violation of the order entered by this Commission with respect to proportional rates for grain after the decision of the U. S. Supreme Court in *A. L. Mechling, et al. v. U. S. et al.*, 330 U. S. 567. The rail distance via N.Y.C. from Moronts to Kankakee is, on information and belief, 83.5 miles and from Kankakee to Chicago is 54.4 miles.

V. There is, further, no showing in said Fourth Section Application No. 33955 that such a drastic rate reduction is required to meet truck-barge competition, since the only allegation made is that the barge rates from the river points nearest the points on the New York Central Line west of Kankakee range from 4.25¢ per cwt. to 5¢ per cwt., which figures are without any Ex Parte 206 increase. No showing is made of the cost of trucking such grain to the river points, nor of other additional costs paid by the shipper.

such as the cost of trimming, incidental to carriage by barge, but not to carriage by rail.

[fol. 328] Average trucking charges to the nearest river elevator at the distances listed in Exhibit 5 attached to the said rail application, from the rail elevators and their immediate vicinity, on information and belief, recently were (and have not decreased) as follows:

Station	Highway Miles	Truck Charges Per Cwt.	Barge Rate To Chicago From Nearest River Elevator
Union Hill	28	6.4¢	4.25¢
Reddick	28	6.4¢	4.25¢
Blair	25	7.0¢	4.25¢
Dwight	19	6.0¢	4.25¢
Sunbury	18	6.0¢	4.25¢
Budd	17	6.0¢	4.50¢
Missal	19	6.0¢	4.50¢
Streator	15	5.7¢	4.75¢
Milla	13	5.7¢	4.75¢
Lostant	12	5.7¢	5 ¢
Priscilla	11	5.7¢	5 ¢
McNabb	10	4.1¢	5 ¢
Granville	4	3.5¢	5 ¢
Moronts	4	3.5¢	5 ¢

In addition river elevation costs, on information and belief, recently averaged (and have not decreased) about 2.7¢ per cwt. and trimming and shovelling costs about 1.3¢ per cwt. Thus the total expense to Chicago via truck and barge from any of the rail elevators varies from 12.5¢ at Moronts and Granville to 15.25¢ at Blair. The 5½¢ rate is therefore calculated to, and has eliminated any possibility of any barge competition (to say nothing of preserving the in- [fol. 329] herent advantage of the low cost barge transportation, which is being destroyed by the rate relation between rail and barge which the Commission is being asked to approve, all in direct defiance of the Transportation Act of 1940 and of the U. S. Supreme Court in *A. L. Mechling et al. v. U. S., et al.*, 330 U. S. 567 (1946).



Thus, whereas because of the inherent low cost advantage of barge transportation as compared to rail transportation the river elevators formerly were able to bid more for corn than could the rail elevators, the situation has now been reversed, and protestant avers upon information and belief that, because of the extremely low rate promulgated by the New York Central, rail elevators on the New York Central west of Kankakee are now bidding from  $5\frac{1}{4}\text{¢}$  to  $9\text{¢}$  per cwt. more for corn to be transported on the N.Y.C. rails than the river elevators can bid for corn to be transported by barge, and far more than rail elevators in that area on other railroads can bid. A comparison of these differences in the grain prices bid with the trucking charges shown above, demonstrates that even sellers in the immediate area of the river elevators can profitably truck their corn to the New York Central rail elevators, and protestant [fol. 330] upon information and belief avers that most of the corn available for market in the area of the river elevators is now being so trucked. Thus the area supplying the river elevators which had been created by their natural position has been artificially and almost completely diverted to the rail elevators on the New York Central, notwithstanding the inherent low cost advantage of the barge transportation.

Moreover, the limitation to 6,000,000 bushels annually on the diversion of traffic (which the Traffic Executive Association-Eastern Railroads states in the said application for authority to depart from the 4th Section of the Act will be imposed by the capacity and equipment of the rail elevators involved) takes no account of portable loading facilities which are already in use at the N.Y.C. rail origins in question, the use of which can also rapidly be expanded. Nor does it take into account the possibility of expansion of permanent capacity and equipment of rail elevators at such N.Y.C. rail origins. Thus the projected 41% diversion of barge traffic to rail, which by itself would seriously injure the barge carriers, appears to be a gross underestimate, [fol. 331] of what will be in fact practically a 100% diversion to N.Y.C. rail of corn originating in the area in question.

VI. Furthermore the 5½¢ rate is so low that it has invited and, in fact started, a rail rate war. Lines of the Gulf, Mobile & Ohio Railroad, Chicago, Rock Island & Pacific Railroad, Atchison, Topeka & Santa Fe Railway, Chicago, Burlington & Quincy Railroad, Wabash Railroad, Chicago & Eastern Illinois Railroad and Illinois Central Railroad are close enough to the NYC line west of Kankakee to make it profitable to truck grain from stations on these lines or from areas formerly supplying stations on these lines to stations on the NYC line because of the present freight rate differences. As a result both the first two named railroads have given notice of their intention of reducing their rates on corn and corn products from points in this area. Prior to the institution of this 5½¢ rate, these rail rate levels had been stable for many years. After the 5½¢ rate had been in effect for some months, the Gulf, Mobile & Ohio Railroad, in making application to the Illinois Freight Association to reduce such rates on its own line, stated:

“ . . . it would appear necessary to view the situation in the light of individual interest.”

[fol. 332] Thus with the individual action undertaken by the New York Central, followed by the Chicago, Rock Island & Pacific Railroad's proposed reduction the avowed intention of the G. M. & O. to act in its own interest only, the way appears to be prepared for a rail rate war that will injure the participating railroads and divert all corn from barges to the rails in the area from Peoria to Chicago.

VII. The 5½¢ rate, together with the abolition of the requirement that the local rail charge for said service to eastern destinations shall from Kankakee, be no more than the rate for rail service to the same destinations from points west of Kankakee, has reduced and will continue to reduce the amount of corn and corn products marketed in Chicago or processed there. Routing via Chicago from Kankakee is not permitted to destinations in Central Territory. Agent H. R. Hinsch's Tariff No. 535-C, I.C.C. No. 4499. The 5½¢ rate is so low that corn from sources which normally supply Chicago now is diverted to Kankakee for shipment to destinations in Central, Trunkline, and New England Territories. Protestant is advised that of approximately 1,350

cars of grain originating at the rail elevators in the area of the N.Y.C. tracks west of Kankakee during the six months [fol. 333] ending on June 30, 1957, which normally moves via Chicago, less than half were routed via Chicago. The rate is thus a gross discrimination against the City of Chicago in violation of Section 3(1) of the Interstate Commerce Act. Similarly the 5½¢ rate and the abolition of the requirement that the local rail charge for rail service to eastern destinations from Kankakee shall be no more than the rate for rail service to the same destinations from points west of Kankakee is a discrimination against cities such as Peoria, Milwaukee, Decatur, Paris, Danville, Joliet, Cairo and St. Louis, where a similar requirement still applies; and also is a discrimination against points in Indiana, whose local rates until December 15, 1956, had been fixed on a scale with the Kankakee local rate that gives effect to the differences in distances to Central, Trunkline, and New England Territories.

It necessarily must be discriminatory to permit an abnormally depressed combination rate through a rail junction such as Kankakee, which is not located on navigable water and has no particular advantage from its location, without permitting similarly depressed combination rates through all other rail junctions similarly situated.

[fol. 334] The Relief Carrier has the burden of sustaining the lawfulness of its said 5½¢ rate. This protestant denies that said rate is lawful under the National Transportation Policy; denies that said rate is lawful under Section 1, Section 2, Section 3, or Section 4 of the Interstate Commerce Act when administered and enforced in accordance with the National Transportation Policy, enacted by Congress in 1940 as an amendment to that act; and protestant shows that the petition for approval of said rates lacks even averments that show that lawfulness of said rate in said particulars.

Wherefore, protestant prays that the application herein be dismissed summarily for failure to make any showing that the proposed rate is compensatory, that it is required to meet competition, and that it will preserve the inherent advantage of low cost water transportation, that it is in



accordance with Sections 1, 2, 3 or 4 of the Interstate Commerce Act when administered in accordance with the National Transportation Policy which is the governing part of that Act; and further, that the Relief Carriers be ordered to cease and desist from exacting the rate specified in Sec. 4, Supp. 122, NYC Tariff 701-A, I.C.C. No. 1169, and [fol. 335] to restore the rates as they existed prior to December 15, 1956, subject to increases in Ex Parte 206, by cancellation of tariff references noted below; or if such action be not taken that the above application be set for hearing in Chicago, Illinois, and that pending entry of a final order in this proceeding by the Commission the Relief Carriers be ordered to cease and desist from exacting the rate specified in Sec. 4, Supp. 122, NYC Tariff 701-A, I.C.C. No. 1169, to restore the Kankakee local rate as the minimum for combinations of proportional rates across Kankakee, and otherwise to restore the rates for the points specified in such Section 4 as they existed prior to December 15, 1956, subject to increases in Ex Parte 206, by cancellation of:

(1) All rates on Corn to Kankakee, Illinois, originally established in Section 4, Page 3, Supplement 114, New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169.

(2) All rates on Corn to Kankakee, Illinois, published in Section 4, Page 40, Supplement 122, New York Central Railroad Company Freight Tariff 701-A, I.C.C. 1169, which is a re-issue of the rates covered by paragraph (1).

[fol. 336] (3) Item 279 (new) and the concluding part of the Exception in Note 20, which refers to Item 279, all on Page 2, Supplement 84, Central Territory Railroads Tariff Bureau Freight Tariff 245-H, I.C.C. 4403, which originally became effective December 15, 1956.

(4) Item 279 on Page 17 and the concluding part of the Exception in Note 20, which refers to Item 279 on Page 11, both in Supplement 93, Central Territory Railroads Tariff

Bureau Freight Tariff 245-H, I.C.C. 4403, which is a re-issue of the provisions of paragraph (3).

(5) Paragraph B-6 of Exceptions to Note 45, shown on Page 4, Supplement 38, Central Territory Railroads Tariff Bureau Freight Tariff 535-C, I.C.C. 4499, originally effective December, 15, 1956 and still in effect.

Respectfully submitted,

A. L. Mechling Barge Lines Inc., By Edward B. Hayes, Registered Practitioner.

135 South La Salle Street, Chicago 3, Illinois.

July 16, 1957.

[fol. 337] Certificate of service (omitted in printing).

[fol. 338]

AMENDMENT NO. 3 TO FOURTH SECTION APPLICATION BY TRAFFIC EXECUTIVE ASSOCIATION—EASTERN RAILROADS—Filed July 22, 1957

Commission's No. 33955

E. R. No. 2386

July 19, 1957

File: C1301-383

To the Interstate Commerce Commission,  
Washington 25, D. C.

O. E. Schultz, Vice-Chairman, Traffic Executive Association—Eastern Railroads, for and on behalf of carriers parties to Fourth Section Application No. 33955, hereby amends said application to the extent and for the reasons shown below.

# I

Amend application by adding the following paragraph directly before the last paragraph on Page Two thereof:

"The proportional rates for which relief is sought herein, will apply from the involved Illinois stations via the New York Central Railroad (W) direct to Kankakee as published in NYC RR Tariff 701-A, ICC No. 1169, thence via routes from Kankakee that presently

apply in connection with proportional rates therefrom, as more fully shown in Agent H. R. Hinsch's Tariff 245-H and 535-C, ICC Nos. 4403 and 4499 respectively."

Amend Page Three of the application by adding the following, directly following the last paragraph thereon:

"The only additional departure that would occur in connection with the observance of these combination rates would be via the direct and indirect routes at origins where the through combination rates from the more distant points would be lower than the local rates from Kankakee, Illinois and other origins east thereof. [fol. 339] Technically, departures would also occur at destinations, which are no different than those that presently occur in connection with the proportional or reshipping rates from Kankakee, Illinois, which are protected under relief afforded by Fourth Section Order No. 18407, issued pursuant to Fourth Section Application No. 32292. However, no new departures would be created at destinations by observance of the factors to and from Kankakee, and relief would be only necessary at destinations in the aggregate of intermediate rates via direct and indirect routes in departures of the same type in character, that occur in the proportional rates mentioned above from Kankakee. These rates in the aggregate would be  $5\frac{1}{2}\%$  higher to all points of destination over the proportional rates in effect from Kankakee."

This application is being further amended pursuant to telegram received from Secretary H. D. McCoy, dated July 11, 1957.

Wherefore, your applicants respectfully pray that the relief sought in the application, as amended, be granted.

[fol. 340] All of which is

Respectfully submitted

....., Vice-Chairman, Traffic Executive  
Association—Eastern Railroads, Agent for Appli-  
cants, One Park Avenue, New York 16, N. Y.

*Duly sworn to by O. E. Schultz, jurat omitted in printing.*



[fol. 341]

PETITION OF NORRIS GRAIN COMPANY OF PROTEST AGAINST  
FOURTH SECTION AUTHORITY 33955—Filed July 22, 1957

Mr. Harold D. McCoy, Secretary  
Interstate Commerce Commission  
Washington 25, D. C.

Dear Sir:

The Norris Grain Company respectfully protests the following Fourth Section Application and hereby petitions the Interstate Commerce Commission to enter upon an investigation and inquiry into the lawfulness thereof, and to grant a public hearing in order that the Norris Grain Company and other interested parties may express their views and be heard. The Fourth Section Application referred to is designed as:

*Fourth Section Application I.C.C. 33955* issued by O. E. Schultz, Vice Chairman, Traffic Executive Association—Eastern Railroads, dated June 28, 1957 and published in the Federal Register Saturday, July 6, 1957.

In support of its protest, this petitioner respectfully states:

I

This petition is filed in behalf of the Norris Grain Company, a corporation existing by and under the laws of the State of Illinois with offices in the Board of Trade, 141 West Jackson Boulevard, Chicago 4, Illinois, who own and operate [fol. 342] the Calumet Elevator, 3017 East 102nd Street, and the Norris Elevator, 98th Street and the Calumet River, with a combined capacity of 4,950,000 bushels, and several other elevators located along the Illinois Waterways. The Norris Grain Company engages in the purchasing, storing and reshipping of whole grains via rail and barge and are vitally interested in the rates and charges affecting this traffic from points in the State of Illinois and surrounding territory via Chicago markets when destined to points in Central Freight Association, Western Termini, New England and Trunk Line territories.

## II

Fourth Section Application, I.C.C. No. 33955, dated June 28, 1957, was issued by O. E. Schultz, Vice Chairman, Traffic Executive Association Eastern Railroads, for and on behalf of carriers, parties to Agent H. R. Hinsch's Tariff No. 245-H, I.C.C. No. 4403, and Tariff No. 535-C, I.C.C. No. 4499, in addition to New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169. The application seeks authority to maintain rates from origins on their Kankakee Belt line, viz., Moronts, Illinois to Van's Siding, Illinois, without observing the long and short-haul provision of Section 4 (1) of the Interstate Commerce Act. The New York Central Railroad seeks relief in connection with traffic to Central Freight Association Territory, other than Western Termini points, scheduled to become effective July 30, 1957, in Supplement No. 126, to New York Central Tariff 701-A, I.C.C. No. 1169, and applying in connection with rates published in Agent H. R. Hinsch's Tariff 535-C, I.C.C. No. 4499.

This petitioner has filed concurrently with this protest [fol. 343] a petition for investigation and suspension of Supplement No. 126 to New York Central Tariff 701-A, I.C.C. No. 1169, for reasons stated therein, and will vigorously protest the above entitled Fourth Section Application 33955 and its effects on origins in Illinois and surrounding territory to the entire Central Freight Association Territory, Western Termini points and Trunk Line and New England territory.

We believe that the rail carriers are entitled to meet competition provided, however, it is done in a lawful manner and not in contravention to the National Transportation Policy or the Interstate Commerce Act. The New York Central in their application refers repeatedly to barge competition, and they have only undertaken to meet a small segment thereof in behalf of a select group of shippers to the gross unjust discrimination against others.

It will also be noted in their application the New York Central seeks to originate traffic on their Kankakee Belt Line between Moronts, Illinois, and Van's Siding, Illinois, and move same through Kankakee direct to the East on their own rails seeking relief from the flat rate via Kan-

lakee, and do not seek similar relief via Chicago Gateway placing shippers in this area at a disadvantage. Reference is also made to meeting competition moving through the Chicago Gateway on Barge-Rail traffic to the East by publishing rates to and from Kankakee to meet that competitive situation and disregarding Chicago, which is the barge unloading port, and also served by the New York Central, and on which they refuse to meet competition where it actually exists, thereby discriminating directly against the [fol. 344] very interchange point on which their entire proposition is based.

The manufacturing, milling and processing of grain is very important to the Norris Grain Company and should be on an equal basis as to drawing grain from the same origin-territory and selling competitively at destination.

### III

The Norris Grain Company would like the opportunity, along with other interested parties in the grain trade, to appear before the Interstate Commerce Commission and express their views in this very important matter.

### IV

As previously stated, it is our opinion that rail carriers should have the opportunity of meeting their competition at a fair and reasonable level of rates, not an unfair level with an intent to destroy other competitive markets in the vicinity.

We also approve and join in the Petition filed by the Transportation Department of the Chicago Board of Trade, of which we are a member, and accept their supporting exhibits as factually representing our position and thereby avoid being repetitious in supporting our petition with the voluminous detail and exhibits of which they have so adequately treated.

[fol. 345]

### Prayer

Wherefore, the petitioner prays that the Fourth Section Application herein protested be made the subject of an investigation by the Interstate Commerce Commission and



that such investigation embrace also the extension of the application of the rate from Illinois points via Kankakee, Illinois, to Official Territory in the aforementioned Supplement No. 126 to New York Central Tariff 701-A, I.C.C. No. 1169, and that each of the aforementioned investigations be joined and made the subject of public hearing at Chicago, Illinois, or such place as to the Commission seems appropriate for the purpose of permitting all shippers and interested parties to appear and fully present their case in opposition to the granting of this Fourth Section Application and the extension of the rate application.

All of which is,

Respectfully submitted,

Norris Grain Company, V. M. Conley, Manager of  
Transportation, 141 West Jackson Boulevard, Chi-  
cago 4, Illinois, Dated at: Chicago, Illinois, July  
17, 1957

Certificate of service (omitted in printing).

[fol. 346]

*Duly sworn to by Lee H. Wagner, jurat omitted in print-  
ing.*

[fol. 347]

BEFORE THE INTERSTATE COMMERCE COMMISSION

PETITION OF ILLINOIS GRAIN CORPORATION OF PROTEST AGAINST  
F.S.A. 33955—Filed July 22, 1957

Mr. Harold D. McCoy, Secretary  
Interstate Commerce Commission  
Washington 25, D. C.

Dear Sir:

The Illinois Grain Corporation located at 141 West Jackson Boulevard, Chicago 4, Illinois, respectfully protests the following Fourth Section Application and hereby petitions the Interstate Commerce Commission to enter upon a state of investigation enquiring into the lawfulness

thereof and to hold a public hearing in order that petitioner and other interested parties may be heard. The Fourth Section Application referred to is designated as:

*Fourth Section Application I.C.C. 33955*, issued by O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads under File E. R. 2386 dated June 28, 1957 as publicized in the Federal Register Saturday, July 6, 1957.

In support of its protests this petitioner respectfully states:

## I

This petition is filed on behalf of the Illinois Grain Corporation, which is a corporation organized under the laws of the state of Illinois and is affiliated with the Illinois Agricultural Association, which is the state Farm Bureau in Illinois with approximately 195,000 farm families. It [fol. 348] operates a six and one-half million bushel terminal elevator in the Lake Calumet Harbor at Chicago, Illinois. It owns and operates four elevators on the Illinois River and one elevator in Illinois on the upper Mississippi River and one elevator at Tampa, Florida. It has a membership of 159 farmer cooperative elevators in Illinois who own stock in the corporation. Its purpose is to buy and sell grain for its members who move these commodities into and out of the market via barge and rail for its members and is vitally interested in rates and charges affecting their traffic from origins in the state of Illinois and adjacent territory when destined to points in Central Freight Association Territory and Western Termini of Eastern Trunk Lines and east thereof, which is the territory involved in this application.

## II

Fourth Section Application, I.C.C. No. 33955 dated June 28, 1957 was issued by O. E. Schultz, Vice-Chairman, Traffic Executive Association-Eastern Railroads for and on behalf of carriers parties to Agent H. R. Hinsch's Tariff No. 245-H, I.C.C. No. 4403 and No. 535-C, I.C.C. No. 4499 in

addition to New York Central Railroad Tariff No. 701-A, I.C.C. No. 1169. It seeks authority to maintain rates without observing the long-and-short-haul provision of Section 4 (1) of the Interstate Commerce Act.

This petitioner, Illinois Grain Corporation, on July 16th, filed a petition for suspension of Supplement No. 126 to NYC Tariff 701-A, I.C.C. No. 1169, which is embraced in this Fourth Section Application 33955. This petition filed by the carriers refers to whole corn originating on its line west of Kankakee, Illinois, but does not apply on whole corn applying from point of origin to final destination. The corn must be milled in transit in order to obtain the proportional in-bound rate. This limits the use of this [fol. 349] rate to a limited group of users and is unfair and destructive, competitive practices. The National Transportation Policy states in part: "It is hereby declared to be the National Policy of Congress to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantage, or unfair or destructive competitive practices."

This petitioner supports the petition for suspension filed by the Board of Trade of the City of Chicago. We believe that the present 5½¢ combination rate over Kankakee, Illinois, which became effective on December 15, 1956, is in violation of Sections 1, 2, 3, 4 and 6 of the Interstate Commerce Act and should be cancelled by the Interstate Commerce Commission, and petitioner respectfully requests that the Interstate Commerce Commission set this for public hearing and assign it at Chicago, Illinois, for convenience of parties affected.

Respectfully submitted,

Illinois Grain Corporation, By Thomas J. Crowe,  
Vice-President and Traffic Manager.

[fol. 350] *Duly sworn to by Thomas J. Crowe, jurat omitted in printing.*



[fol. 351]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

AMENDMENT NO. 1 TO PROTEST OF A. L. MECHLING BARGE  
LINES INC. AGAINST FOURTH SECTION APPLICATION I.C.C.  
No. 33955, E. R. No. 2386—Filed July 26, 1957

A. L. Mechling Barge Lines Inc. hereby amends its Protest Against Fourth Section Application 33955 heretofore filed in this proceeding as follows:

## I

By adding the following paragraphs as new paragraphs at the end of Section II on Page 3:

"In Amendment 3 to said Fourth Section Application, dated July 19, 1957, the Relief Carriers no longer allege that the origin departures which will occur by reason of the combination rate are only 'technical' departures. It is clear that these departures, created by the extraordinarily low 5½ cent rate and the abolition of the requirement that the combination rate for all-rail transportation be at least equal to local rail rates from Kankakee, are much different in principle from presently approved departures involving all-rail combination rates in which Kankakee proportionals are a factor. [fol. 352] Formerly the general situation maintained under the Commission's Fourth Section orders was that as to origins west of any reshipping point named in Agent H. R. Hinsch's Tariff 245-H, I.C.C. No. 4403, there was permitted no all-rail rate, combination or otherwise, eastbound lower than the rail rate to the same destinations from the reshipping point or origins east thereof. The present rail application requests authority to depart from that situation as to all origins on New York Central (and New York Central only) at and west of Kankakee, Illinois, for transit via Kankakee.

"One consequence (and the avowed object) of this radical departure is that, as to corn bound to eastern destinations from the origin area near the northern portion of the Illinois River Waterway, the inherent low cost advantage of barge transportation is no longer

reflected by a differential between the combination barge-rail rates and the combination all-rail rates to these destinations from this origin area, with the further consequence that substantially all corn hitherto shipped by barge from this origin area to supply such eastern destinations will be diverted to the rail transportation of the New York Central Railroad."

This amendment is filed pursuant to permission granted in Secretary H. D. McCoy's telegram of July 24, 1957.

[fol. 353] Wherefore your protestant respectfully renews its prayer in its protest.

Respectfully submitted,

A. L. Mechling Barge Lines Inc., By: Edward B. Hayes, Registered Practitioner, 135 South LaSalle Street, Chicago 3, Illinois.

Certificate of service (omitted in printing).

[fol. 354]

BEFORE THE INTERSTATE COMMERCE COMMISSION

RESPONDENT'S REPLY TO PETITIONS IN OPPOSITION TO RELIEF REQUESTED IN FOURTH SECTION APPLICATION I.C.C. No. 33955 AND THE VARIOUS PROTESTS AND PETITIONS FOR SUSPENSION—Filed July 30, 1957

Proposed Rates:

- (1) 5½-Cent Per Hundred Pound Proportional Rate, Including Ex Parte 206 Increase.
- (2) Re-shipping Rates from Kankakee to Central Territory Destinations.

Effective Date:

August 29, 1957 (Special Permission No. 73523) [Original Effective Date July 30, 1957].

Tariff References:

- (1) Proposed Rates: New York Central Freight Tariff
  - o No. 701-A, Supplement No. 126, I.C.C. No. 1169; H. R. Hinsch's Tariff 535-C, Supp. 41, I.C.C. 4499.

- (2) Present Application of 5½ Cent Rate: New York Central Tariff No. 701-A, Supplement 122, I.C.C. No. 1169; H. R. Hinsch's Tariff 245-H, Supp. 93, I.C.C. No. 4403; H. R. Hinsch's Tariff 535-C, Supp. 41, I.C.C. No. 4499.

**Commodities:**

Corn and Corn Products.

**Minimum Weight:**

100,000 Pounds Inbound.

**Territory:**

From—N.Y.C. Stations Specified in Section 4 of Supplement 126.

To—(1) **Kankakee, Ill.**

(2) Reshipping Rates to Apply Beyond to Points in Central Territory.

**Present Application of 5½ Cent Proportional Rate:**

Applies in Conjunction with Reshipping Rate to Eastern Trunk Line and New England Territories.

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Richard J. Murphy, William C. Leiper, Attorneys  
for Respondent and Applicant, 1225 LaSalle St.  
Station, Chicago 5, Illinois.

Dated: July 29, 1957.

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[fol. 355]

**PREFATORY STATEMENT**

Respondent and applicant, The New York Central Railroad Company, has been served with numerous protests and petitions for suspension of New York Central Railroad Company Tariff 701-A, Supplement 126, I.C.C. No. 1169 and a like number of petitions in opposition to the granting of the relief requested in Fourth Section Application, I.C.C. No. 33955. In many instances, the petitions for suspension were attached to petitions in opposition. Similarly, the petitions for suspension refer frequently and extensively to matters pertaining to F.S.A. 33955. For these reasons, and in the interest of brevity and convenience,



respondent will reply to each and every protest and petition for suspension and each and every petition in opposition in a single, consolidated reply.

[fol. 356]

# REPLY

## I.

### A History of Events Leading to the Filing of Fourth Section Application I.C.C. No. 33955

The New York Central in an effort to meet barge competition established a rate from stations on its Kankakee belt line, located in the heart of the corn country in Illinois. This proportional rate applying on corn to Kankakee was designed to approximately equalize the through transportation charges via all rail movement with the costs which obtain via barge-rail movement. While the barge-rail aggregate does not require relief from the long-short haul clause of the Interstate Commerce Act, the all rail route does require relief when such a route fails to comply with said clause.

In connection with the all rail situation, through rates are published from origin territory to destinations east thereof that are higher than the combination of proportional factors applying to and from Kankakee, Illinois, as illustrated below:

From:	To:	Rates in Cents Per 100 Pounds
Dwight, Ill.	N.Y., N.Y.	.72
Kankakee, Ill.	N.Y., N.Y.	.52
Dwight, Ill.	Kankakee, Ill.	.055

Authority: Agent H. R. Hinsch. —I.C.C. 4403

(Rates include  
Ex Parte 206)

NYC —I.C.C. 1169

*Rates shown above to N.Y., N.Y. apply on Grain products.*

[fol. 357] As a result, appropriate amendments were made in C.T.R. Tariffs 245H and 535C restricting application of the through rates. The opinion prevailed that with restriction of the through rate application and with appropriate Fourth Section relief in effect from Kankakee, no Fourth Section departures were created and publication accordingly was made on December 15, 1956.

The combination rates were restricted to apply only to Western Termini of Eastern Trunk Lines and East thereof. Attention was not focused on Fourth Section departures which this restriction created to Central Territory destinations intermediate to termini stations.

As set forth in F.S.A. 33955 your respondent was advised by the Commission that due to the territorial restriction, unauthorized departures were created at destinations in Central Territory. In order to rectify the situation respondent caused to be listed for consideration before Traffic Executive Association—Eastern Railroads at their May 23, 1957 meeting, a proposal designed to include Central Territory as a destination territory in connection with combination of the water competitive factor to Kankakee, Ill., and proportional factor beyond. The Traffic Executive Association approved this action and implementation was accomplished in Supplement 126 to N.Y.C. I.C.C. 1169 amended to be effective August 29, 1957.

The purpose for which Fourth Section Application E.R. 2386, I.C.C. No. 33955, as amended, was filed is clearly set forth therein and should not require repeating at this time.

Respondent in good faith assumed that outstanding relief properly protected the proportional factor applying beyond the reshipping point. The water competitive factor to Kankakee applied at all intermediate points between Moronts and Van Siding, Ill. It appeared ample protection existed. In order to allow for the application of the [fol. 358] combination rate in lieu of the single factor through rate certain necessary amendments were published in the tariff publishing the through rates. Subsequent investigation revealed that limitations placed on the Fourth Section relief in effect from the reshipping stations re-

stricted the protection of rates only to the observance of the local or flat rate from such reshipping station as the minimum.

The overabundance of words devoted to hypothetical situations which it is possible to conjure up as a result of the requirement that the corn be milled in transit in order to qualify for the combination through rate, is quite surprising to your respondent inasmuch as the Chicago Board of Trade and other interested parties were advised some time ago of respondent's intention to eliminate this qualification as soon as possible after disposal of the Fourth Section technicalities. Your respondent has no control whatsoever of transit rules published by carriers granting transit privileges at various stations in Official Territory. However, the anomalies portrayed should not exist upon elimination of the milling in transit qualification, to any greater extent than contemporaneously is in effect in connection with barge-rail movement.

## II.

### The Reason for the Rate.

The rate was engendered as a result of processors located in Kankakee, Indianapolis, Danville, Paris and other points in Official Territory exhibiting interest in obtaining rail corn from the country elevator without paying a premium for such billing.

The area west of Kankakee is one of the most prolific in the country for the growing of corn. Since the advent of the barge in great numbers on the Illinois waterway, grain that would normally come to the country elevators located in this area on The New York Central has been trucked to the river terminals, as is succinctly illustrated by the following tabulation of figures:





### Receipts at Chicago by Illinois Waterway

Year	Wheat Bu.	Corn Bu.	Oats Bu.	Rye Bu.	Barley Bu.	Soy Bean Bu.	Total Bu.
1935 .....	661,000	723,000	170,000	—	—	—	1,554,000
1936 .....	437,000	1,299,000	33,000	—	19,000	28,000	1,816,000
1937 .....	2,113,000	2,019,000	366,000	—	—	97,000	4,595,000
1938 .....	30,000	—	—	—	—	—	30,000
1939 .....	—	—	—	—	16,000	—	16,000
1940 .....	2,773,000	16,266,000	174,000	—	—	733,000	19,966,000
1941 .....	1,695,000	15,349,000	211,000	—	—	442,000	17,697,000
1942 .....	550,000	15,094,000	53,000	50,000	—	197,000	15,944,000
1943 .....	51,000	12,400,000	180,000	156,000	—	1,000	12,788,000
1944 .....	584,000	13,663,000	108,000	—	—	—	14,355,000
1945 .....	997,000	13,494,000	1,141,000	—	—	728,000	16,360,000
1946 .....	692,000	17,164,000	3,006,000	—	—	1,420,000	22,282,000
1947 .....	1,567,000	29,996,000	1,633,000	5,000	—	1,272,000	34,473,000
1948 .....	2,782,000	28,501,000	2,561,000	7,000	—	2,039,000	35,890,000
1949 .....	3,220,000	38,296,000	4,660,000	16,000	—	4,415,000	50,607,000
1950 .....	1,604,000	45,919,000	5,727,000	5,000	—	6,676,000	59,931,000
1951 .....	1,424,000	39,133,000	3,153,000	2,000	—	6,342,000	50,054,000
1952 .....	1,836,000	40,349,000	2,996,000	—	—	8,195,000	53,376,000
1953 .....	2,632,000	28,253,000	3,953,000	35,000	—	8,128,000	43,001,000
1954 .....	2,567,000	20,612,000	4,036,000	32,000	—	5,205,000	32,452,000
1955 .....	4,186,000	14,887,000	9,853,000	—	—	8,672,000	37,598,000
1956 .....	6,712,000	26,210,000	9,872,000	—	172,000	15,668,000	58,634,000
1957 (1st 6 Mo.)...		15,791,000					
1956 (1st 6 Mo.)...		12,686,000					

Source: Chicago Board of Trade "Grain Trade Statistical Annual".

In contrast with the above figures, following is the corn movement from the Kankakee Belt stations for the years 1954, 1955 and 1956.

[fol. 360]

## CARLOAD CORN—1954-55-56

To

	Chicago	Kankakee	Milwaukee	Battle Creek	Toledo	Louisville	Decatur	Peoria	Paris	Indianapolis
From	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56	1954-55-56
Union Hill ....	120 86 175	13 56 38	20 — —	20 — —	— — —	4 — —	4 — —	— 5 —	— — —	— — 14
Reddick .....	5 5 —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —
Blair .....	17 37 32	— 8 8	— — —	— — —	— — —	— 24 —	— — —	— — —	— — —	— — 2
Dwight .....	23 39 42	— 2 2	— — —	— — —	— — —	— 10 —	— — —	— — —	— — —	— — 2
Sunbury .....	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —
Budd .....	22 28 21	— 8 4	— — —	— — —	— 15 —	— — —	— — —	— — —	— — —	— — —
Missai .....	30 65 52	11 17 12	— — —	— — —	— 8 —	— 13 —	4 — —	— 5 —	— 2 —	— — 1
Streator .....	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —
Milla .....	— — —	— — 5	— — —	— — —	— — —	— — —	8 — —	— — —	— — —	— — —
Lostant .....	1 36 —	— — 6	— — —	— — —	— — —	— 15 —	— — —	— 5 10	— — —	— — —
Priscilla .....	2 15 —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —	— — —
McNabb .....	— 19 30	— — 4	— — —	— — —	— 11 —	— — —	— 1 1 —	— 2 —	— — —	— — —
Granville ....	— — 16	— — —	— — —	— — —	— 9 —	— — —	— — —	— — —	— — —	— — —

One bushel of corn weighs 56 lbs., two thousand bushels to the average carload.



Also shown below are the entire grain movements from this area for the years 1950 through 1953 contrasted with the carloads originated at stations on the Kankakee Belt in Indiana immediately east of the area in which the barge competition exists.

**West End Elevators**

Location	1950	1951	1952	1953
Greenwich, Ill. ....	106	107	86	72
Van Siding, Ill. ....	0	0	0	0
Union Hill, Ill. ....	191	164	201	239
Reddick, Ill. ....	16	8	0	9
Blair, Ill. ....	20	28	46	59
Dwight, Ill. ....	8	32	29	29
Sunbury, Ill. ....	5	0	4	2
Budd, Ill. ....	41	51	37	6
Missal, Ill. ....	82	42	79	29
Altmar, Ill. ....	0	2	0	0
Milla, Ill. ....	1	1	29	14
Priscilla, Ill. ....	8	28	21	10
McNabb, Ill. ....	12	12	71	0
Granville, Ill. ....	1	0	67	0
Moronts, Ill. ....	0	0	0	0
Total .....	491	475	670	469

East End Elevators		1960	1961	1962	1963
Location					
Exline, Ill. ....	280	232	283	252	
Edgetown, Ill. ....	4	0	2	3	
Illinoi, Ill. ....	86	77	115	74	
Eldridge, Ill. ....	0	0	80	35	
Schneider, Ind. ....	1484	1486	1576	1577	
Schnsider, Ind. ....	104	149	184	149	
DeMotte, Ind. ....	212	143	206	212	
Kersey, Ind. ....	102	89	146	175	
Wheatfield, Ind. ....	53	63	43	69	
Tefft, Ind. ....	55	69	112	112	
San Pierre, Ind. ....	51	44	78	81	
No. Judson, Ind. ....	65	49	109	138	
Knox, Ind. ....	78	57	71	75	
No. Liberty, Ind. ....	40	110	222	291	
Total .....		2623	2568	3227	3243
West End Elevator					
Total .....		491	475	670	469
Grand Total .....		3114	3043	3897	3712





[fol. 363] The stations from which the water competitive rate is published runs through typical rural territory. There would naturally be only an insignificant movement of manufactured and miscellaneous commodities originating or terminating in this area. The most valid reason for the existence of these rails is to handle the agricultural products originating in the area contiguous thereto. If this purpose is vitiated, the line cannot assume its proportionate burden in defraying the expense inherent in its maintenance. The weight of such cost is necessarily shifted to another portion of the railroad. This trend ultimately leads to situations which culminate in abandonment proceedings. The end result is most undesirable from the standpoint of all parties involved. The public loses the services of a common carrier for lack of ability to sustain service, the carrier never gains by abandonments, except in a negative fashion, by eliminating the necessity of bearing onerous deficits.

### III.

#### Level of the Rate.

The barge rate published from river terminals on corn is from  $4\frac{1}{2}$  cents at Morris, Ill. to 5 cents at Spring Valley, Ill. for an average rate of 4.62 cents per hundred pounds. As a result of these rates, the river terminals draw corn from areas a great distance from the river.

The involved stations on the Kankakee Belt closely parallel the Illinois River as shown in the map attached as Exhibit No. 1. The map indicates the approximate highway mileage to the river terminals. When one considers the measure of the barge rate from the river terminal as compared with the rates published by the railroad before December 15, 1956, the economic reasons for moving the [fol. 364] grain abnormally long distances becomes manifest. The reliance by protestants on truck costs as a factor in the cost of transporting grain via barge is of less significance when consideration is given to the fact that such truck movements only occur because of the financial advantages to be realized from such operations.

The seller of the grain to the river elevators has discovered that it is to his advantage, economically, to by-

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# Carloads Corn Movement—Six Months 1957

(See opposite)

	Blair	Budd	Dwight	Granville	Loontj	McNabb	Mills	Miscal	Priscilla	Reddick	Streator	Sunbury	Union Hill	Van Siding	Total
Chicago .....	94	72	24	84	26	92	1	69	36				50		549
Paris .....	9	12	24		22	10	14	11	1	5	8	3	36		155
Danville .....	5	16	37		1			6	1	1		2	30		99
Indianapolis ..	20	15	33		6	9		8		57			115		263
Kankakee .....	121	36	101	5	60	55	105	67	17	21	18	20	150	33	815
Lafayette .....													2		2
Buffalo .....		9											5		14
Schneider .....			25												25
	255	160	244	89	110	166	112	161	52	84	26	25	388	33	1921

The great outcry that if this adjustment is not summarily cancelled the barge movement will dry up, so to speak, is not borne out by the figures which are available covering the movements via rail versus barge during the first six months of 1957. These figures indicate that while the respondent has enjoyed substantially more traffic than in previous years, its participation still represents only 20% of the total movement. Also worthy of note is the fact that the barge movement was greater during the first half of 1957 than in the first 6 months of 1956, and 1956 was a better year than any since 1953. The wail of impending disaster does not appear justified when considered in the light of the facts. A logical explanation for the continued movement via barge exists. The barge rates which range from 4.25 to 5.00¢ at cross-country river terminals average out to 4.625¢. The going barge rates have not been increased in 1957 while [fol. 366] the rail rate was subjected to Ex Parte No. 206 on December 28, 1956. The current all-rail rate is 5.5¢. This is approximately 119% of the average barge rate.

The statement covering barge movements further indicates the relatively insignificant volume of corn which the barge operators enjoyed two decades ago. The movement at that time was overwhelmingly by rail. The country elevators enjoyed the business for which they were established. For lack of necessity there was only a minor investment in elevator facilities on the river. The situation assumed entirely different proportions after 1940. The rail movement for all intents and purposes vanished.

The non-movement of corn by rail continued unabated until the respondent established a rate designed to compete with the water rates. The barge competitive rate applies for distances ranging from 5.2 miles to 83.5 miles and averaging 46.4 miles. The carload minimum weight of 100,000 lbs. produces minimum revenue of \$55 per car. When applied against the average mileage the per car mile earnings are 118.5 cents. This, we consider to be remunerative revenue. The efficacy of the water competitive rate has been established. It has generated sorely needed traffic from the involved stations. It has, however, in no way impeded the



much greater movement via the Illinois Waterways to Chicago, Ill.

#### IV.

##### Comparison Barge Versus Rail Costs.

One Protestant (Cargill) indicates certain accessorial costs are necessary when movement is via barge. The protestant loses complete sight of the fact that the same costs are involved in rail transportation as in barge transportation. For example, reversing the situation outlined by one [fol. 367] protestant, trucking expense would likewise be involved from Morris, Illinois to Dwight, Illinois, and a higher rate would prevail for the rail movement.

The comparison further conveniently fails to indicate that the country elevator would also charge elevation. Furthermore Federal inspectors can refuse to test, for grading purposes, cars which have not been leveled. Moreover the shipper has the labor expense of installing grain doors and the proper unloading of the box car after movement is an additional chore which adds to the cost of transporting via rail. Respondent has no access to the actual costs of these operations, however, there would certainly appear to be no great advantage to rail carriage versus barge movement with regard to the incidental costs inherent in the respective modes of transportation. Of significance is the fact that none of the additional charges cited is a published tariff charge and all would depend to a certain extent upon competitive necessity for absorption, efficiency of operation, volume of movement and any number of additional factors beyond the common carriers' control.

The example would tend to indicate that protestant assumes he is entitled to draw grain from under the noses of the rail carriers as readily as if it were originating in his own back yard.

#### V.

##### The Proportional Rate Is in Keeping With the National Transportation Policy.

Certain of the protestants and petitioners give lip service to the principle that a railroad should be permitted to meet

its competition and yet they strenuously resist respondent's efforts to apply that principle. The reason is clear, identical rates to those now proposed to Central Territory have met with a small measure of success from the same origins to [fol. 368] Eastern Trunk Line and New England territories. The barge interests are reluctant to permit any inroad, even a modest one, into their virtual monopoly of the corn movement from the northern Illinois origins.

The Kankakee Belt or New York Central West End extends from Zearing, Ill., to South Bend, Ind., through the Northern Illinois Corn Belt (Exhibit No. 2). It passes through numerous farming communities and serves a number of country elevators located on its sidings. The Illinois River flows through the same general area and parallels the Kankakee Belt along the major portion of its line west of Kankakee (Exhibit No. 1). There being little industry along its railroads, the Kankakee Belt is a low traffic density railroad largely dependent upon the transportation of the products of agriculture for its revenues.

While a substantial volume of corn traffic was at one time generated on the Kankakee Belt, between the years 1940 through 1956, the corn traffic originating thereon was negligible. Respondent is informed that the dearth of corn traffic was engendered by the inability of the N.Y.C. elevator operators, under the applicable rates, to meet the bids of elevators located on the river, the latter being favored with low barge rates on the Illinois River to Chicago. During all or a portion of that period most of the elevators located on the Kankakee Belt were forced to cease commercial elevation of grain and became, for the most part, river shippers of grain through a business transaction similar to brokerage. Such rail movements of grain, as there were from the involved origins, were sporadic and consisted of approximately two cars a day from the entire West End.

Respondent's management has long deplored the deteriorated state to which the Kankakee Belt has fallen as a carrier of corn. A railroad with an ideal location running [fol. 369] through the heart of the Northern Illinois Corn Belt, by-passing Chicago with its time-consuming and costly

rail terminals, and having unencumbered access to Eastern lines, and thereby, to the major corn markets in the East, has been unable to attract corn traffic to its rails (Exhibit No. 2).

This deplorable state of affairs existed through December, 1956. However, in June of 1956 respondent's management, in the exercise of their managerial discretion, undertook, by means of proper rate legislative procedures, to publish a proportional rate of 5 cents per hundred pounds from the N.Y.C. country elevators to Kankakee, Ill. to apply in conjunction with reshipping rates to western termini of eastern trunk lines and points east thereof. This basis of rates resulted from conferences between respondent's management and the interested elevator operators, millers and processors, and represents respondent's mature appraisal of the level of rates necessary to meet its barge competition, to encourage the long desired return of a portion of the eastbound corn movement to its rails and to restore the Kankakee Belt to its rightful position as a carrier of corn.

That these rates have achieved a measure of success, albeit a modest one, is perhaps best portrayed by an excerpt from a letter received from one of the shippers involved:

"Certainly this has put the West End back in business. Grass is no longer growing between the switch tracks, and the main line tracks are not being worn out by the endless stream of trucks which were crossing them on almost every road on their way to the river."

[fol. 370] Thus, a portion of the corn movement from Northern Illinois has been restored to the Kankakee Belt and will continue to so move so long as the 5½ cent proportional rate remains competitive.

On the other hand, the volume of the corn movement which will revert to the Kankakee Belt is limited by many factors. For example, it is limited by the demand for corn products, by the capacity of the N.Y.C. country elevators, by the supply of grain box-cars, by the distance the farmer



must truck the corn to the N.Y.C. elevators, to mention only a few such factors. Respondent estimates that it will recover approximately 6,000,000 bushels of corn traffic annually as a result of the application of the  $5\frac{1}{2}$  cent proportional rates to Central, Eastern Trunk Line and New England territories.

Certainly, there is no foundation in fact for the assertions of those protestants and petitioners who state that the proportional rate in question will result in a total diversion of the corn traffic from the barges. Assuming *arguendo*, the impossible, that the proportional rate resulted in a recovery of 12,000,000 bushels of corn annually, the barge movement would in all likelihood still approximate 20,000,000 bushels, for respondent is informed that the average Chicago receipts of corn by barge was 31,250,000 bushels for the past ten years.

Respondent categorically denies that the  $5\frac{1}{2}$  cent proportional rate is a destructive competitive practice. Indeed, respondent has shown that during the period that the  $5\frac{1}{2}$  cent rate has been in effect to Eastern Trunk Line and New England territories the barge receipts of corn at Chicago have increased substantially over the comparable period for 1956 when said  $5\frac{1}{2}$  cent rate was not in effect. All that the barge operators stand to lose is a comparatively small portion of their profits. The National Transportation Policy does not require rail carriers to maintain rates that are too high for fear of cutting profits of carriers by barge. *Miss. Valley Barge Co. v. U. S.*, 292 U.S. 282, 288; *Barytes from Missouri Points to Charleston, W. Va.*, 291 L.C.C. 501, 503.

The line of the Kankakee Belt, as previously noted, passes through the heart of the Northern Illinois Corn Belt, bypasses the costly and time-consuming rail terminals of Chicago and has direct and unencumbered access to the east-bound main lines of the New York Central (W) and other eastern lines. These must be construed to be inherent advantages which, under the National Transportation Policy, must be preserved. *Interstate Commerce Commission v. Mechling*, 330 U.S. 567. Nor does said Policy require the transportation agency having the inherent advantage to

maintain its rates at a level which will enable other forms of transportation to compete successfully. *Compressors-Iecumseh, Mich. to Springfield, Mass.*, 297 I.C.C. 797.

## VI.

### The 5½ Cent Proportional Rate Restores Country Elevators to a Position of Equality With River Elevators.

Respondent has been informed by the corn processor on its line at Kankakee that irrespective of its geographic advantage of being located on the Kankakee Belt within 5.2 miles of one of the N.Y.C. country elevators (the others ranging from 14.6 to 83.5 miles from Kankakee), said processor was unable to purchase corn from said elevators but was forced, to be competitive with other processors, to purchase its corn requirements from Chicago. This was true despite the fact that the corn purchased at Chicago was grown and harvested on farms within a few [fol. 372] miles of the country elevators located on the Kankakee Belt. In many instances the corn moved by truck past a N.Y.C. country elevator on its way to the river thence by barge to Chicago thence back by rail to Kankakee.

It is respondent's position that the elevator operators located on its line west of Kankakee are entitled to a competitive rate which will enable them to compete with the river elevators in furnishing the requirements of the Kankakee corn processor. The 5½ cent proportional rate has proven its effectiveness in accomplishing this end. Likewise, it eliminates the wasteful transportation involved in moving corn from points a few miles west of Kankakee to Kankakee via Chicago.

## VII.

### Involved Proportional and Reshipping Rates No Lower Than Necessary to Meet the Competition.

The 5 cent proportional rate (currently 5½ cents) from the N.Y.C. country elevators to Kankakee became effective to the East on December 15, 1956. It is important to note that apparently none of the parties now so vigorously protesting considered the 5 cent proportional to be lower than necessary to meet the competition of the barges. Now, when

the proportional has been increased to 5½ cents and respondent is endeavoring to expand its application to C.F.A. territory so as to eliminate any possible Fourth Section departures in that territory the barge and river elevator operators become quite exercised. As the rates proposed in Supplement 126 to N.Y.C. Tariff No. 701 merely represent the expansion of rates already effective, respondent submits that protestants and petitioners are now estopped from alleging said rates to be less than compensatory or lower [fol. 373] than necessary to meet the competition unless such allegations appear in a complaint.

Furthermore, after rates identical to those protested have been in effect nearly seven months, the barge and river elevator operators present alleged costs incident to barge movement of corn (Cargill protest, p. 3). Respondent submits that certain of the costs shown are not properly shown. For instance, it is respondent's information that the farmer bears the expense of hauling his corn in his truck to the river elevator. Again, it is understood that the charge for elevation at the river elevator and at Chicago includes an element of profit, the measure of which respondent has no knowledge.

Even if the costs cited be proper, protestants have instanced no expense which does not apply equally to movements of corn by rail. Corn is brought to the country elevators by truck and it is elevated twice, once at the country elevator and once in Kankakee, and there are like costs for trimming and shoveling. Indeed, the rail movement requires the additional expense for the installation of grain doors, etc.

The parties raising the question of costs by barge versus costs by rail desire to create the inference that the barge competitive rail rate must be placed on a differential above the transportation costs by barge. Respondent respectfully submits that there is no necessity here that such a differential be maintained.

The Commission's policy with regard to such differentials is set forth in *Tobacco to Houston, Tex.*, 210 I.C.C. 284. It is there stated at page 287:



"With respect to the rate differential, while we have customarily authorized relief only in rates which made proper allowance for the *disadvantages of water service, if any*, the amount of the differential depends entirely upon the circumstances of each case, and it is *not mandatory that any differential be imposed*, provided the rate authorized for the rail carriers be not lower than necessary to meet the competition."

Similarly in *Billets from Ohio and Kentucky to New Bedford, Mass.*, 298 I.C.C. 796 this Commission, referring to the opinions of the Supreme Court in *Dixie Carriers, Inc. v. United States*, 351 U.S. 56 and *Interstate Commerce Commission v. Mechling*, *supra* says of the necessity for a differential at pages 799-800:

"The two decisions of the Supreme Court referred to assume that there are inherent advantages in barge transportation, as distinguished from rail transportation, in that the former is less costly than the latter. In a number of cases this Commission has indulged in a like assumption. Here, however, the comparison is not between a rail route and a barge route as such, but between a rail route and a truck-barge-rail route. Whether the actual cost of transportation over the latter route is in fact less than over the all-rail route is not supported by any evidence on this record, and may not be assumed by us merely because barges are used for a part of the service. If the operating cost over the truck-barge-rail route is less than that over the all-rail route, that fact should be susceptible of proof. As stated, no such proof was offered.

"There being no evidence to warrant a finding that the truck-barge-rail route has any inherent advantages that would entitle it to lower rates than the all-rail route, we feel obliged not to require a barge differential under the rail rates. This conclusion is further supported by the clear and positive testimony of the shipper's traffic manager that inasmuch as the shipper must bear the difference between the rate from Steelton and that from the lowest rated competitive point, an

all-rail higher than the aggregate over the truck-barge-rail rate would not move any traffic. Similarly, under the proposed rate, which is the same as the rate over the competing route, some of the traffic would move all-rail and some would move over the truck-barge-rail [fol. 375] route. That testimony is not rebutted by general statements to the effect that barge rates the same as rail rates have failed to attract traffic, for there is no specific showing that the latter results have occurred under circumstances similar to those now before us.

"Carriers are at liberty to initiate such rates as they choose, and we may not interfere unless it appears that such rates violate some provision of the act, interpreted in the light of the national transportation policy. Where, as here, the proposed rates are on a level that is reasonably related to the level of rates from competitive origins the earnings produced thereby leave no doubt of their compensatory nature, and the evidence is definite that the rates would afford a fair and equal opportunity to both the respondents and the protestants to compete for the traffic without sacrificing any inherent advantages of either mode of transportation, we feel called upon not to interfere with the managerial discretion of the respondents.

"We find that the proposed rates are just and reasonable. An order discontinuing the proceeding will be entered."

If there are inherent advantages in the barge service which come into play in the involved movement, and the Chicago barge receipts for the first 6 months of 1957 would seem to refute any such assumption, respondent urges that since the 51½ cent proportional rate is 119 percent of the average published barge rate from the river elevators those disadvantages are allowed for in the proportional rate.

## VIII.

The Law Does Not Require the Preservation of  
 'Chicago's Position as a Middleman.

On movements of corn from the involved river elevators through Chicago to the processor in Kankakee on respondent's line, Chicago is in the position of a middleman. Respondent does not deny that Chicago grain warehousemen have a financial interest in having the northern Illinois corn stored in their elevators, however, that interest alone cannot govern the level of the rates applying between two points as far removed from Chicago as Moronts and Kankakee. The interest of the public, the country elevator operators and the corn processors in more economic transportation, is the controlling interest in this instance.

Thus, in *Transit and Mixing Rules on Foodstuffs*, 270 I.C.C. 157, the Commission found as follows at page 175:

"It is not the province of the Commission to determine the relative merits of different sales methods or by rate adjustments to perpetuate any particular system or sales pattern of distribution. Section 15(a) of the Act requires the Commission to give due consideration, among other things, 'to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service'. The interest of manufacturers and retailers are as much a part of 'the Public interest' as those of middlemen. The determination of whether the proposed tariffs are just and reasonable must be made on other grounds."

Subsequently, in *Transit on Foodstuffs at Toledo, Ohio*, 277 I.C.C. 689, the Commission stated at page 697:

"As stated in the prior report, Page 175, 'It is not the province of the Commission to determine the relative merits of different sales methods or by rate adjustments to perpetuate any particular system or sales pattern of distribution. \* \* \* The interests of manufacturers and retailers are as much a part of 'the



methods proposed to be employed by the corporation would aid the carriers in more efficient and economical use of their equipment and, we believe, would have a favorable revenue effect upon the participating carriers."

[fol. 377] Nor does the fact that Chicago is an interterritorial grain rate-break point alter the relationship of the involved interests. Respondent emphatically denies that the 5½ cent proportional rate operates to contravene the rate-break principle. It is submitted that here, where corn originates east of the Mississippi River on the line of an eastern railroad and is carried into and out of the processing point by an eastern railroad and the product carried to an eastern or central territory destination by an eastern railroad, the rate-break principle has no application.

## IX.

### Carriers' Section 5A Agreement Was Fully Complied With in Publishing Proposed Rates.

It is alleged that in publishing Supplement 126 to New York Central Tariff No. 701-A the carriers' Section 5a Agreement was violated. Respondent submits the following paragraphs in refutation of that allegation.

With respect to the allegation that respondent has violated the Section 5a Agreement we wish to call attention to Part 2 of the Traffic Bulletin dated June 23, 1956 which listed the following:

IRC 503-195—CORN, CL, min. wt. 100,000 lbs., from W. Kankakee, Union, Hill, Reddick, Blair, Dwight, Sunbury, Budd, Missal, Streator, Milla, Lstant, Priscilla, McNabb, Granville and Moronts, Ill. to Kankakee, Ill.  
—Rate: 5½ per cwt., including X-196 inc.

This notification was made pursuant to the interterritorial agreement of Section 5a. The docket outlined above, copy of which is attached, Ex. No. 3 indicates the proposed rate is in no way encumbered by restriction on the ultimate destination of the milled product. The Proposal was con-

sidered by the I.F.A. executive committee at its meeting [fol. 378] on July 25, 1956, and was approved. Not one of the protestants availed itself of the opportunity of appearing before the committee to express its views on the proposed adjustment. Respondent cannot conceive of such lack of interest on the part of a group which one year later exhibits such militant opposition to the granting of the relief petition.

All interterritorial rate adjustments are subject to concurrence of other rate jurisdictions. The Section 5a Agreement does not require further hearings in addition to that offered before the initial rate committee. Therefore, contentions that Section 5a Agreement was violated are unfounded inasmuch as shippers have had every opportunity to exercise their prerogative when the proposal was originally bulletined for consideration before the initial rate committee.

Assuming for purposes of argument only that the carriers' Section 5a agreement was breached by the publication of Supplement 126, such violation could have no bearing upon the legality of the rates therein. The tariff was published in strict compliance with Section 6 of the Act and hence the rates therein provided are the legally applicable rates. The sole effect of such an infraction would be to subject respondent to prosecution under the Anti-Trust Law.

## X.

The Presently Effective 5½ Cent Proportional Rate Is Just and Reasonable and Should Not Be Summarily Cancelled.

The 5½ cent proportional rate as it applies, in conjunction with reshipping rates, on corn and corn products moving to the East has been shown to be highly remunerative [fol. 379] and compensatory. Furthermore, said rate has been shown to be no lower than necessary to meet the barge competition. In short, the rate has been demonstrated to be just and reasonable and an effective generator of traffic.

For these reasons alone, the 5½ cent proportional rate should not be summarily cancelled. However, an equally

important reason, and one which makes it imperative that the many requests for summary cancellation be denied, is that several of the operators of N.Y.C. country elevators, in reliance upon the 5½ cent rate as the published and legally applicable rate, have made substantial capital expenditures in readying their elevators to elevate and store the corn the 5½ cent rate has enabled them to purchase. If these operators are again forced to halt commercial elevation they will be deprived of the means of making themselves whole on their investments and will suffer an unrecoverable financial loss.

Certainly rates which have become the legally applicable rates by reason of publication in compliance with Section 6 should not be summarily cancelled on the strength of the unsworn, self-serving assertions contained in the numerous petitions filed by the protestants and petitioners.

## XI.

### The Interests of the Protestants and Petitioners.

The various interests seeming to motivate certain of the petitions for suspension and petitions in opposition to the sought Fourth Section relief are worthy of note.

The interest of the members of the Chicago Board of Trade as middlemen has previously been treated. The protest of Cargill, Inc., states alleged costs for barge transportation and includes therein a barge rate of 4.25 cents per hundred pounds. It is, however, respondent's information that Cargill owns and maintains its own barges. A question [fol. 380] arises therefore as to whether that protestant transports its own corn in its own barges and, if it does, whether the costs shown in the Cargill protest have any application to its own movements.

Another interest to be noted is that of the barge operators in assuring the rigid compliance of respondent with the provisions of the Interstate Commerce Act while they undoubtedly exempt their own movements of corn from the regulation of this Commission by taking advantage of Section 303(a). This being true, the extent to which the published barge rates are the rates under which the corn actu-



ally moves from the river elevators to Chicago is open to question.

Certain of the petitioners display an uncommon regard for the interests of others. For instance, several of the petitions charge that the 5½ cent proportional rate will harm other railroads serving the origin area and that millers in Akron and other cities will be injured. Be that as it may, the Supreme Court of the United States has clearly established by its opinions that the law "will not listen to a party who complains of a grievance which is not his." *Clark v. Kansas*, 176 U.S. 114, 118; *Smiley v. Kansas*, 196 U.S. 447; *Interstate Commerce Commission v. Chicago, R. I. & P. Ry.*, 218 U.S. 88, 109.

#### Conclusion.

The rates brought in issue by the protests and petitions for suspension merely extend the destination territory to which identical rates presently apply. Respondent has shown the benefits which have already derived from the presently effective rates to the Kankakee Belt, the country elevators, Kankakee, Indianapolis, etc. It is submitted that the application of said rates to Central Territory will prove equally beneficial.

[fol. 381] In order that both the proposed and presently effective rates may comply with Section 4 of the Act, respondent filed its Fourth Section application I.C.C. No. 33955, as amended. The relief from the provisions of the long-and-short haul clause therein requested is opposed by numerous petitioners. No one of said petitioners is a shipper situated in a city which will, because of the involved rates, take a higher rate than a city beyond. Respondent has shown its dire need for the rates here involved as well as the importance of said rates to shippers and receivers on its line. It is submitted that a special case has been made out for the relief requested.

Wherefore, respondent and applicant respectfully requests that the proposed rates be permitted to become effective on August 29, 1957, as scheduled, that the relief sought in Fourth Section application I.C.C. No. 33955 be granted

and that the requests for summary cancellation of the rate presently applicable be denied.

Respectfully submitted,

William C. Leiper, 1225 LaSalle Street Station, Chicago 5, Illinois.

Dated: July 30, 1957.

Certificate of service (omitted in printing).





LAKE

CHICAGO

INDIANA

EXHIBIT NO. 1

MAP I -  
Map of Northern Illinois out-  
lining N.Y.C.R.R. and Illinois  
Waterways together with  
approximate highway distances  
between railroad stations and  
and nearest river terminal  
elevators.


[fol. 382]

EXHIBIT NO. 1

280

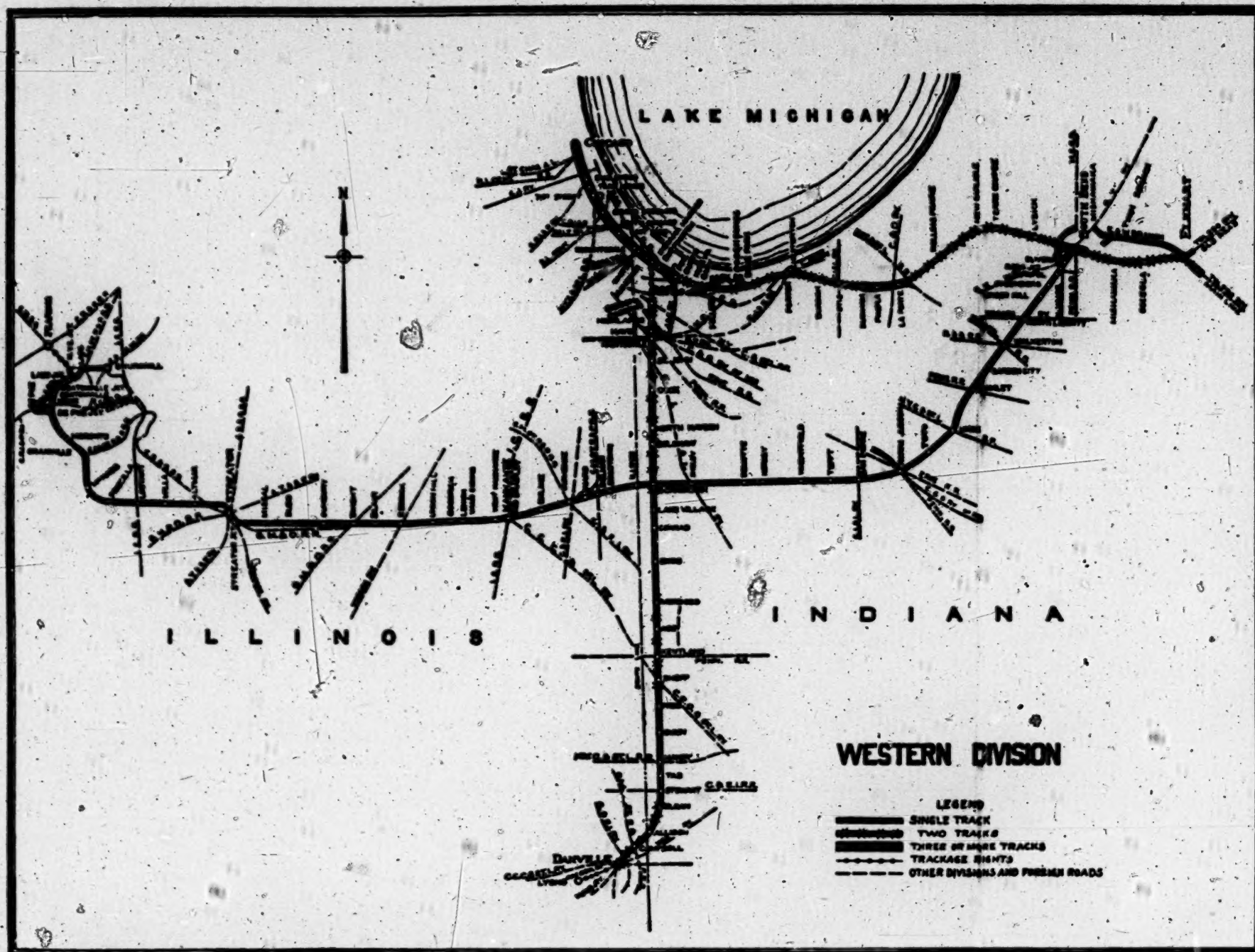
[fol. 383]

EXHIBIT No. 2

(See opposite) 







[fol. 384]

## EXHIBIT No. 3

Illinois Freight Association Application I.R.C. D-503-195, dated June 18, 1956 omitted from the record here. Printed at page 200.

[fol. 386a]

## BEFORE THE INTERSTATE COMMERCE COMMISSION

RENEWAL OF REQUEST OF A. L. MECHLING BARGE LINES INC.  
TO REQUIRE FORTHWITH TERMINATION OF ADMITTED VIOLATIONS OF SECTION 4(1) OF THE INTERSTATE COMMERCE ACT—Filed August 1, 1957

The purpose of this communication is to call to the Commission's attention, again, that the New York Central Railroad under its Tariff 701-A and Supplement 122 thereof, in combination with its eastern connections under Agent H. R. Hinsch's Tariffs 245-H and 535-C, I.C.C. Nos. 4403, and 4499, is charging and collecting rates which are a departure from the 4th Section of the statute without any authority of this Commission, and the requests that have heretofore been made to the Commission by numerous parties that an order be entered requiring said railroads to cease and desist from this violation of the law.

The fact that the rates in question are departures from the 4th Section and the further fact that they have not been authorized by this Commission, are admitted by the New York Central and its eastern connections by their application, as amended, in F.S.A. 33955, wherein they request *in futuro* the Commission's approval of such departures.

In its said application, as amended, the Traffic Executive Committee for the Eastern Trunk Line Railroads of which [fol. 386b] the New York Central is a member states as follows:

"When the 5½-cent proportional rate referred to herein to Kankakee, as published in NYC Tariff 701-A, ICC No. 1169, is added to the reshipping rates appli-

cable from Kankakee, which are the same as from Chicago, to the involved destination territory published in Agent H. R. Hinsch's Tariffs 535-C, ICC No. 4499 and 245-H, ICC No. 4403, they produce through combination rates which are lower than the local or flat rates applicable from Kankakee and stations east, north and south thereof located along routes of eastern lines to the extent that they participate in the involved tariffs to points in the destination territory referred to, in which instances, unauthorized departures occur due to higher local rates from intermediate points, and additional relief appears necessary."

Said application for 4th Section relief with respect to said departure rates, thus admittedly put into effect by the New York Central and its connecting railroads without securing any authority therefor from this Commission, the protest of the undersigned A. L. Mechling Barge Lines Inc., and the petition of the undersigned Waterways Freight Bureau are hereby referred to, and the averments of said protest and petition are made a part hereof.

Said barge line, and all the other barge line members of the Waterways Freight Bureau engaged in the transportation of corn to Chicago via the Illinois Waterway, are suffering irreparable injury by the illegal maintenance of said rates by the New York Central Railroad, which becomes [fol. 386c] progressively greater as the shipping public becomes more widely cognizant of the existence of such illegal rates.

The undersigned respectfully calls the Commission's attention to the provisions of Section 12(1) of the Interstate Commerce Act and especially the third sentence thereof, authorizing and requiring the Commission to execute and enforce the provisions of the Interstate Commerce Act, and further to the provisions of Section 15(1) of the Interstate Commerce Act, and especially its provision authorizing this Commission to order that carrier or carriers shall cease and desist from violations of the Interstate Commerce Act to the extent that they exist.



Said 4th Section application requests authority to maintain, after the Commission shall so order, the said rates now illegally in effect, and also authority for the New York Central's tariff supplement making the same applicable to destinations in Central Territory, which supplement was published to become effective on July 30, 1957. On that date the Commission advised the undersigned barge line that the effective date of said supplement had been postponed to August 29, 1957, but that the Commission had no information as to whether or not any of the rates would be withdrawn, even though said rates were by admission, as aforesaid, being maintained, in violation of law, to Eastern Trunk Line and New England Territory.

[fol. 386d] The undersigned respectfully direct the Commission's attention to the fact that there is no procedure available to them under the Commission's rules which can be completed in less than sixty days to bring about the withdrawal of said unlawful published rates, except the action of this Commission (heretofore requested) under Sections 12(1) and 15(1) to require the withdrawal of said illegal rates, which last is accordingly the only administrative remedy which the undersigned have for the irreparable injury they presently suffer from said admittedly illegal rates, and further that the violation of the Interstate Commerce Act by the maintenance of said illegal rates to Eastern Trunk Line and New England Territory is now fully admitted by the publishing railroads in their pending request to the Commission that it grant relief that will render such rates legal for exaction on future traffic that may be carried after the Commission grants such relief (if the Commission should decide on hearing that such relief from the Act would be warranted).

The facts as stated herein stand formally admitted in the Commission's records, as aforesaid, and the illegality of said rates, as presently published and exacted, is thus admitted.

Accordingly, the undersigned again requests the Commission to require the withdrawal of said illegal rates, [fol. 386e] whose present exaction pending the consideration of the said railroads' request for authority to exact

them, cannot under the law be retroactively validated by any order which the Commission may hereafter enter.

July 31, 1957, at Chicago, Illinois.

Respectfully submitted,

A. L. Mechling Barge Lines, Inc.; By: Edward B. Hayes, Registered Practitioner, 135 South LaSalle St., Chicago, Illinois.

Waterways Freight Bureau; By: Wesley A. Rogers, Chairman and Registered Practitioner, 28 East Jackson Blvd., Chicago 4, Illinois.

Certificate of service (omitted in printing).

[fol. 387]

BEFORE THE INTERSTATE COMMERCE COMMISSION

REPLY OF GENERAL FOODS CORPORATION DATED AUGUST 6, 1957 TO SECOND PROTEST OF MECHLING BARGE LINES AND WATERWAYS FREIGHT BUREAU DATED JULY 31, 1957 IN F.S.A. 33955

Mr. H. D. McCoy, Secretary  
Interstate Commerce Commission  
I.C.C. Building  
Washington 25, D. C.

Dear Mr. McCoy:

On July 31, Edward B. Hayes, in behalf of the A. L. Mechling Barge Lines, Inc. and Waterways Freight Bureau, filed a supplemental communication with the Commission in the above proceeding.

The allegations fall into two classes:

1. (Page 2) Protestants allege they "are suffering irreparable injury by the illegal maintenance of said

rates by the New York Central Railroad, which becomes progressively greater as the shipping public becomes more widely cognizant of the existence of such illegal rates." Again on Page 4 protestant avers that "they *presently* suffer" from the publication of the 5½ cent rail rate.

2. They allege a departure from the Fourth Section without authority from the Commission.

[fol. 388] With respect to allegation 1: This is merely an unsupported statement and in direct conflict with the facts as portrayed in our statement of reply dated July 29, 1957, showing that Barge receipts of Corn at Chicago increased over 3,000,000 bushels during the first six months of 1957, when the 5½ cent rate was in effect versus the first six months of 1956.

This allegation is obviously designed to leave the impression of great harm where actually none exists. We respectfully submit exaggerated statements of this type with no supporting evidence whatever be dismissed from consideration by the Commission.

As to allegation 2: We believe the New York Central Railroad has adequately replied to the question of Fourth Section relief.

Applications for relief from the Fourth Section are generally contested by industry intermediate between the origin and destination territories.

There are no such protestants in this proceeding. Why not? Because no new low transportation costs from the origin to the destination territory are involved. To the contrary, the all rail combination produces a higher through rate factor than does Barge rail. For example, Barge rail to New York is 4¼ cents plus 52 cents or 56¼ cents per cwt. through versus all rail of 5½ cents plus 52 cents or 57½ cents through.



[fol. 389] This higher rail combination does not invoke hardships by virtue of Section 4, that have not existed since the application of the reshipping rate to Barge Grain some 19 years ago.

As a matter of fact, anyone alleging harm by virtue of deviations from the Fourth Section would quite probably have claimed such harm when the Supreme Court decided in 1947 that Barge arrival Corn was entitled to rail reshipping rates from Chicago, which railroads had been applying as early as 1938.

Certainly the combination of Barge-rail factors produced lower through rates than were then, and are still today, in effect from points east of Chicago to the territory east thereof.

We believe the New York Central Railroad published this rate in absolute good faith, believing the combination of proportional rates required no additional relief. If any such relief is required for clarification then we respectfully request it be granted promptly. We believe, too, that we are supporting it in equally good faith. We hope the Commission will find that Congress did indeed intend equality of competitive opportunity for the railroads as well as competitive forms of transportation.

Sincerely yours,

Arthur C. Schier, Vice President-Traffic, 250 North Street, White Plains, N. Y.

Copies to all known parties of record.

[fol. 390]

Examiner's proposed report in I.C.C. Docket F.S.A. No. 33955 filed March 16, 1959 omitted from the record here. Printed at page 32.

[fol. 418]

Report of the Interstate Commerce Commission, Division 2 in Docket F.S.A. No. 33955, decided June 8, 1960 omitted from the record here. Printed at page 9.

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[fol. 434]

I.C.C. Fourth Section Order No. 19346, dated June 8, 1960 omitted from the record here. Printed at page 29.

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[fol. 435]

I.C.C. Order denying the petition for reconsideration and reargument dated November 18, 1960 omitted from the record here. Printed at page 31.

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[fol. A]

Secretary's Certificate to foregoing transcript omitted in printing.

[fol. 1]

BEFORE THE INTERSTATE COMMERCE COMMISSION

Docket No. F.S.A. No. 33955

In the Matter of:

CORN AND CORN PRODUCTS—  
ILLINOIS TO OFFICIAL TERRITORY

Transcript of Hearing—Wednesday, January 29, 1958

Room 705, U. S. Custom House,  
610 South Canal Street,  
Chicago, Illinois.

Met, pursuant to notice, at 9:30 a.m.

Before:

GEORGE A. DAHAN, Examiner.

APPEARANCES:

Richard J. Murphy, William C. Leiper, and Daniel J. Sweeney, 1225 LaSalle Street Station, Chicago, Illinois, appearing for Applicants, New York Central Railroad, et al.;

Freeman Bradford, 712 Board of Trade, Indianapolis, Indiana, Appearing for Indianapolis Board of Trade on behalf of applicants;

Edward B. Hayes and Wilbur S. Legg, Suite 2500, 135 South LaSalle Street, Chicago, Illinois, appearing for A. L. Mechling Barge Lines, Emington Grain Company, Book-walter Grain Company, Cullom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, and Mazon Farmers Elevator, protestants;

[fol. 2] James V. Springrose, 1740 Field Building, Chicago, Illinois, appearing for Cargill, Inc., protestant;



Richard M. Freeman, One North LaSalle Street, Chicago, Illinois, appearing for Cargill, Inc., Illinois Grain Corporation, and Indiana Farm Bureau Cooperative Association, protestants;

R. D. Erickson and J. S. Chartrand, Suite 1074, 141 West Jackson Boulevard, Chicago, Illinois, appearing for Board of Trade of City of Chicago, protestant;

A. C. Schier, 250 North Street, White Plains, New York, appearing for General Foods Corporation, intervener in support of the application.

[fol. 4]

# PROCEEDINGS

Exam. Dahan: Come to order, please. There will be no smoking in this room at any time.

The Interstate Commerce Commission has set for hearing at this time and place Fourth Section Application No. 33955, Corn and Corn Products, Illinois to Official Territory.

In entering your appearance will you please give your name in full, your address, and the city, and indicate whether or not you have been admitted to practice before the Interstate Commerce Commission.

Who appears for the applicant?

Mr. Murphy: Richard J. Murphy, 1225 La Salle Street Station, Chicago, Illinois, appearing on behalf of the applicants.

There are other appearances on behalf of the applicant, your Honor.

Mr. Leiper: William C. Leiper, 1225 La Salle Street Station, Chicago, Illinois. I am appearing on behalf of the applicant. I am an attorney and licensed to practice before this Commission.

Mr. Sweeney: Daniel J. Sweeney, 1225 La Salle Street Station, Chicago, Illinois, appearing for the applicant, New York Central Railroad. I am admitted to practice before the Commission.

[fol. 5] Exam. Dahan: Are there any appearances in support of the applicant?

Mr. Bradford: Freeman Bradford, 712 Board of Trade, Indianapolis, Indiana. I am appearing for the Indianapolis Board of Trade, Evans Building Company.

I am an attorney at law and admitted to practice.

Mr. Schier: A. C. Schier, Vice-President, General Foods Corporation, White Plains, New York, appearing in behalf of General Foods Corporation, Corn Mill Division of Kankakee, Illinois, intervener in support of the applicant railroad.

I am not admitted to practice before the Commission.

Exam. Dahan: You are here as an officer of the corporation?

Mr. Schier: Yes.

Exam. Dahan: Who appears for protestants?

Mr. Hayes: Edward B. Hayes, Room 2500, Field Building, Chicago, appearing on behalf of the protestants, A. L. Mechling Barge Line, Inc., and I also appear on behalf of certain interveners who are protestants themselves, Emington Grain Company, Bookwalter Grain Company, Culom Cooperative Grain Company, Dale P. Walsh, Charles Treasure, Griswold Grain Company, and the Mazon Farm-  
[fol. 6] ers Elevator.

I am an attorney at-law and admitted to practice before the Commission.

Mr. Legg: Wilbur S. Legg, Suite 2500, 135 South La Salle Street, Chicago 3, Illinois, appearing on behalf of protestant A. L. Mechling Barge Line. I am an attorney at law and although I am not licensed to practice before the Interstate Commerce Commission, I would ask your indulgence for this proceeding. I have submitted an application which has not yet been acted upon, but I see no reason why it will not be.

Exam. Dahan: This is your first appearance in any proceeding before the Commission?

Mr. Legg: No, this is not the first; this is the second, Mr. Examiner.

Mr. Hayes: May I say, Mr. Examiner, on Mr. Legg's behalf, as he is too modest to say so, he was for many years on the staff of the Illinois Commerce Commission.

Exam. Dahan: You do have an application on file?

Mr. Legg: I have submitted an application, yes, Mr. Examiner.

Exam. Dahan: I will admit your appearance at this time but you will have to have an application acted upon before

you can appear again. Actually you are only allowed one time and this is your second.

[fol. 7] Mr. Freeman: Richard M. Freeman, One North La Salle Street, Chicago, Illinois, appearing on behalf of protestants Cargill, Illinois Grain Corporation and Indiana Farm Bureau Cooperative Association.

I am licensed to practice before the Interstate Commerce Commission.

Mr. Chartrand: J. S. Chartrand, representing the Board of Trade of City of Chicago, 141 West Jackson Boulevard, Chicago, Illinois.

I am a practitioner before the Interstate Commerce Commission.

Now with regard to statement of position, I did not fall in one category wholly nor in the other. It might be stated in this manner, that we are in sympathy with the applicants here, but there are facets of this case which we feel violate other sections of the Act which causes us for those reasons to be opposed to it.

Mr. Bradford: If the Examiner please, in stating my appearance I stated I was representing the Indianapolis Board of Trade, and I would like to say that is except for two members, Cargill, Incorporated and Indiana Grain Coop.

Mr. Erickson: My name is R. D. Erickson. I am assistant manager of the Board of Trade transportation department. I am a registered practitioner with this Commission. The [fol. 8] statements which were made by Mr. Chartrand equally apply with respect to me. I would ask the Examiner's abeyance in a matter. There are some country interests that are going to come up here at the earliest possible opportunity for them that desire to be heard in their own name and who have asked that I assist them at the time they are on the stand. When they come to file their appearance, I should then also care to appear in their behalf.

Mr. Springrose: James V. Springrose, Room 1740, 135 South La Salle Street, Chicago, Illinois, representing protestant Cargill, Inc.

I am a practitioner before the Interstate Commerce Commission, registered practitioner.



**Exam. Dahan:** Are there any other appearances?

(No response.)

**Exam. Dahan:** Is applicant ready to proceed?

**Mr. Murphy:** We are, sir.

I will call Mr. Joseph Tascik as our first witness.

**JOSEPH R. TASCIK**, was sworn and testified as follows:

**Direct examination.**

**Mr. Murphy:** Mr. Tascik has a series of approximately twenty exhibits and I wonder if it would be convenient to [fol. 9] identify them for the record prior to the time he commences his testimony?

**Exam. Dahan:** If that is what you prefer, we will do so now. Whatever you say.

**Mr. Murphy:** I believe it would be better if we do that, your Honor.

**By Mr. Murphy:**

**Q.** Will you state your name, position and address?

**A.** Joseph R. Tascik, Freight Sales Manager, New York Central Railroad Company, with headquarters in La Salle Street Station, Chicago, Illinois.

**Q.** What are your responsibilities?

**A.** The development of business for the New York Central. I also have the regional responsibility of setting the pricing of the transportation service.

**Q.** How long have you been employed by the New York Central in rate and traffic capacity?

**A.** 35 years.

**Q.** Are the New York Central Kankakee Belt stations involved in this proceeding under your jurisdiction?

**A.** Yes, they are.

**Q.** Are you familiar with Fourth-Section Application No. 33955?

**A.** Yes.

**Q.** What is the subject of this application?  
[fol. 10] **A.** Corn and corn products.

**Mr. Murphy:** Your Honor, Mr. Tascik has prepared a series of exhibits. May we have those marked for identification?

**Exam. Dahan:** Very well. Have they been distributed?

**Mr. Murphy:** They have been distributed.

The first exhibit that will be tendered by Mr. Tascik is a map.

**Exam. Dahan:** That will be marked for identification as Exhibit No. 1.

(Applicant's Exhibit No. 1, Wit. Tascik, marked for identification.)

**Mr. Murphy:** The second exhibit tendered by Mr. Tascik is marked with a letter B in the lower corner of the exhibit.

**Exam. Dahan:** It may be marked as Exhibit 2.

Discussion off the record.

(Discussion off the record.)

**Exam. Dahan:** They may be marked as Applicant's Exhibits 1 through 21.

(Applicant's Exhibits 1 through 21, Wit. Tascik, marked for identification.)

**By Mr. Murphy:**

**Q. Mr. Tascik,** were the exhibits that have been marked for identification as Exhibit Nos. 1 through 21 prepared [fol. 11] by you or under your supervision and direction?

**A. Yes, sir.**

**Q. Are they true and correct to the best of your knowledge and belief?**

**A. They are.**

**Q. Mr. Tascik,** are you familiar with the reasons why Fourth Section Application No. 33955 was filed?

**A. Yes.**

**Q. Are you familiar with the justification for the application?**

**A. Yes.**

**Q. Please describe the origin territory involved in this proceeding.**

A. My Exhibit No. 1 is a map of the New York Central Railroad indicating its Kankakee Belt Line operation and it will be observed the Kankakee Belt extends from Zearing, Illinois to South Bend, Indiana for a distance of 200 miles.

This railroad runs through typical rural territory and the section of the railroad west of Kankakee originates or terminates only an insignificant volume of manufactured and miscellaneous article traffic. The stations west of Kankakee up to and including Moronts, Illinois on the Kankakee Belt are the origin stations involved.

[fol. 12] The proximity of the Illinois River is shown on this exhibit and we have indicated and listed 10 river elevators, Lockport to Lacon, to show their relationship to the New York Central Railroad.

My Exhibit No. 2 shows the highway distances from stations on the New York Central west of Kankakee to logical barge ports that would be utilized in the trucking of corn from areas indicated served by the New York Central.

When corn originates on farms south of the New York Central, you will note from Exhibit 1 for example stations Van's Siding to Priscilla, the trucking distance to the river would be greater than indicated on the exhibit. On the other hand, if the corn originates north of the New York Central and the river, the trucking distance would depend upon the proximity of the farm to the river or railroad. Further illustrating, if the corn originates for example in an area south of McNab, it could move to the river at Hennepin, Henry or Lacon and the distance would here again depend on the proximity of the farm to the river or railroad.

Q. Mr. Tascik, you referred to Van's Siding. Could you locate Van's Siding on your Exhibit No. 1, the map?

A. Van's Siding is the first station west of Kankakee.

Q. Is it shown?

[fol. 13] A. Or West Kankakee.

Q. Is it shown on the map, sir?

A. Yes, sir. I don't believe it is shown in your copy, but it is shown in all the others.

Q. Will you proceed with the answer to the question in describing the origin territory?



A. Until the time the New York Central made itself competitive by adjusting its rates, the preponderance of the corn, irrespective of whether the distance favored the railroad moved to the river. This stems from the fact that the rail rates were not competitive with the barge-rail route through Chicago, and it was more advantageous rate-wise to use the barge route as my subsequent exhibits will demonstrate.

Q. Please describe the destination territory involved in this application.

A. Official territory, which is the territory lying immediately east of Kankakee.

Q. Will you describe the rate application?

A. NYC Tariff 701-A, ICC 1169 coupled with circle reference 400 therein specifically provides that the 5½ cent rate applies only on corn and corn products, when milled-in-transit and only as proportional rate to Kankakee, Illinois, on traffic destined to Central territory, and to the Western [fol. 14] Termini of Eastern Trunk Lines and east thereof, as defined in Central Territory Railroads' Tariff 3-K, Agent H. R. Hinsch's Tariff ICC 4622. Minimum weight 100,000 pounds. Rates are subject to transit rules and regulations published in tariffs lawfully on file with the Interstate Commerce Commission.

Illustrating the tariff application described and using Kankakee as the transit station, the billing procedures are as follows:

The local grain rate from stations here involved to Kankakee is assessed on the corn in the first instance. After transit at Kankakee, the outbound reshipping corn product rate from Kankakee to destination is applied to the transited corn product, plus the 5½ cent proportional rate. These two rate factors constitute the through rate.

The inbound local rate to Kankakee, originally assessed, is credited to the outbound transaction. The net effect of this rate application is that the total rate will be the combination of the 5½ cent proportional rate to Kankakee and the reshipping rate from Kankakee to the ultimate destination.

The same would apply at Indianapolis, Paris, Danville, or any other transit point in Official territory.

[fol. 15] The reshipping rates from Chicago, Illinois and Kankakee to Official territory destinations are the same.

Q. Will you state the reasons why the New York Central reduced the rate on corn from the origins involved here?

A. Year after year we have seen the bountiful crops of corn produced in the territory contiguous to the Kankakee Belt west of Kankakee, Illinois move by barge into Chicago. Our rates were not even remotely competitive with the barge-rail route and after a study in 1956, we concluded that if we wanted a share of the corn movement it was necessary for us to establish a competitive rate.

Q. Have you prepared exhibits showing barge and rail movements of corn?

A. Yes, my Exhibit No. 3 is a statement showing barge shipments to Chicago via the Illinois Waterways. The movement of corn via the Illinois River in 1935 was less than three quarters of a million bushels, it increased to more than 34 million bushels in 1957. This movement of corn via the river during 1957 exceeded the movement in each of the four preceding years. The total barge shipments of all grain via the Illinois Waterways to Chicago increased from approximately one and a half million bushels in 1935 to [fol. 16] more than 59 million bushels in 1957 being the second highest year of record for barge receipts of grain at Chicago.

Q. Have you prepared exhibits showing origination of corn by rail from New York Central stations in the origin area, that is, Van's Siding to Moronts, Illinois?

A. Yes, I have. My Exhibit No. 4 is a statement showing the number of carloads of corn originated by the New York Central at its stations west of Kankakee for the years 1954 through 1956.

This corn movement for the most part was Government grain moving under C.C.C. programs for export. While this corn moved initially into Chicago for storage, that is, a part of it, it was subsequently exported through North Atlantic Ports on the basis of the through export rates from the country origins located west of Kankakee, Illinois, and

which rates are applicable through Chicago. This corn movements was on export rates which are substantially lower than the domestic rates applying from this area to North Atlantic Ports.

The preponderance of the grain traffic originating at these stations is corn; but to show the complete grain movement my Exhibit No. 5 shows the origination of all grain [fol. 17] including corn from these stations during the years 1950 through 1956.

Q. Mr. Tascik, would it be possible to determine the amount of grain other than corn originated in the origin territory for the years 1954, '55 and '56 by subtracting the total shown on Exhibit No. 4 from the total shown on Exhibit No. 5 for those years?

A. Yes. The movement of grains other than corn in 1954 was 162 cars; 1955, 196 cars; and in 1956, 151 cars.

Q. Thank you.

Will you continue?

What other traffic originates in this territory?

A. The territory served by the line of the New York Central west of Kankakee is primarily an agricultural area. Aside from a quarry at Lehigh, a sand pit at Van's Siding, Illinois, and a few industries at Streator, Illinois, the only business available to the New York Central from the West End stations is grain traffic.

Q. Do you have a series of exhibits showing the rate situation as it was at the time you were studying the situation in 1956?

A. Yes, my Exhibit No. 6 is a statement showing rates on grain and grain products from New York Central destinations in Official territory as of July 10, 1956. The grain and grain products rates on page 1 of this exhibit to Trunk [fol. 18] Line territory are single factor rates published in CTR Tariff 245-H and the rates on page 2 of this exhibit to Buffalo and Pittsburgh are likewise single factor rates published in NYC Tariff 701-A.

To interior destinations in Central territory on page 2, the grain rates are based on combinations over Kankakee, Illinois, reflecting the local rates to Kankakee, as provided in NYC Tariff 701-A and the reshipping or proportional



rate applying beyond Kankakee as provided in CTR 535-C. The grain products rates are published as single factor rates in WTL Tariff 68-R.

My Exhibit 7 shows the barge rates and the movement of corn from Illinois River elevators to Chicago, Illinois for period December 15, 1956 to November 11, 1957. It will be observed from the exhibit that the average weighted barge rates is .04625 cents, just slightly over  $4\frac{1}{2}$  cents.

Q. Mr. Tascik, has there been any change in the barge rates recently?

A. Yes. On December 6, 1957 the barge rates were increased approximately two-tenths of a cent per hundred pounds.

Of course, the rail rate was increased five cents under 206 making it  $5\frac{1}{2}$  cents.

Q. You mean a half cent under 206?

[fol. 19] A. A half a cent under 206, and it will be increased another half cent under X 212, which will make the rate 6 cents.

Q. Will you describe your next exhibit, sir?

A. My next Exhibit, No. 8, shows what the barge-rail rates were to representative destinations in Official territory as of July 10, 1956. The rates in this exhibit reflect the .04625 cent barge factor to Chicago plus the published reshipping rates beyond Chicago as of July 10, 1956.

My Exhibit No. 9 is a comparison of the all-rail rates versus the barge-rail combination over Chicago, as of July 10, 1956. It will be noted from this comparison that the rates as of July 10, 1956 favored the rail-barge route from approximately 8 to 18 cents per cwt.

Q. Did you discuss this competitive situation with shippers on the New York Central?

A. Yes, in the course of our study we made inquiries of elevator operators or owners on the New York Central and of transit operators at Kankakee, Danville, Indianapolis and Paris.

Q. What conclusion was reached as a result of this investigation of the competitive situation?

A. It was concluded that the only way to meet the barge [fol. 20] competition was by meeting like with like, that is

by establishing a proportional rate for application with the reshipping rate in the same way the barge rates apply with the reshipping rates.

I want to make it clear the rail reshipping rates on corn and corn products from both Chicago and Kankakee are the same and we published a proportional rate to Kankakee that would make us competitive with the barge rate to Chicago, and the proportional 5 cent rate to Kankakee we published effective December 15, 1956 was in excess of the barge rates. Currently the proportional rate is 5½ cents.

Q. What action was taken?

A. After progressing the matter through the rate committees the 5 cent proportional rate was filed to become effective December 15, 1956 applicable on corn milled-in-transit destined to the Western Termini of Eastern Trunk Lines and East thereof.

Q. Prior to the filing of that tariff that was effective on December 16, 1956, was any consideration given to the necessity for obtaining Fourth Section relief?

A. Yes, originally we contemplated seeking Fourth Section relief simultaneously with the publication of the 5 cent corn rate restricted to apply to Trunk Line territory, but [fol. 21] after review of the outstanding Fourth Section Orders that apply in connection with the Chicago and Kankakee reshipping rates, it was concluded that the relief was already available under those orders.

The reshipping rates from Kankakee and Chicago are the same and the rates via both Kankakee and Chicago are subject to the identical provision of the same Fourth Section Order of the Commission, which is Fourth Section Order 18407. It was concluded that if relief existed via the barge-rail route it also existed via the all-rail route. For many years the combination of the barge-rail rates from the Illinois River area via Chicago have been less than the local rate from Chicago and from Indiana origins to eastern destinations.

Q. Then you mean there are departures in connection with the barge-rail rates?

A. Yes.

Q. Will you continue, please?

A. Subsequently a controversy arose as to whether or not the relief in effect was sufficient. It was also brought to our attention that the publication of the proportional rate for application on shipments to Trunk Line territory created departures to CFA destinations. To obviate the destination situation and to dispose of the controversy, it was concluded to extend the application of the proportional [fol. 22] rate to Central territory; this was accomplished effective August 29, 1957 by publication in Supplement No. 126 to NYC Tariff 701-A, and at the same time we filed Fourth Section Application No. 33955.

Q. Do you have an exhibit showing the present rail combination compared with the barge-rail combination?

A. Well,—

Q. That is, from this origin territory to Eastern destinations?

A. My Exhibit 10 compares the present charges rail versus the barge-rail from origins on the Kankakee Belt west of Kankakee and competitive river ports to representative destinations in Official territory. This exhibit shows that the proportional rate of  $5\frac{1}{2}$  cents to Kankakee, as in existence on December 1, 1957 produces rail charges  $\frac{7}{8}$  of a cent higher than barge-rail charges. In each instance the combination of the barge-rail rate or the all-rail rate is less than the local rates from Kankakee to destinations in the east.

Q. Mr. Tascik, your exhibit shows a weighted average barge rate of 4.625.

Will you discuss what changes have taken place in that rate?

A. Effective December 8th, this weighted average barge rate would approximate .04825. The barge rates reflect [fol. 23] about an approximate two-tenths of a cent per hundred increase.

When the proportional rate was originally published on December 15, 1956, it was 5 cents per hundred pounds reflecting 108% of the weighted average barge rate; under Ex Parte 206 it was increased to  $5\frac{1}{2}$  cents, which is 119% of the weighted average barge rate.



Q. As increased under Ex Parte 212, what percentage of the weighted average barge rate will that rate be of the new increased barge rates?

A. As I have stated, the barge rate was increased on December 6 approximately two-tenths of a cent per hundred pounds.

Our rate of 6 cents as proposed under X 212 will be 125% of the new barge rate.

Q. Do you have an exhibit showing the effect of the establishment of the proportional rate on corn products to C.F.A. destinations when transited at Kankakee?

A. Yes, my Exhibit No. 11 shows to representative destinations in Central territory the present through rates on corn products contrasted with the combination of the proportional rate to Kankakee, plus the reshipping rate beyond.

It will be observed the difference between the through rates and the combination results in reduction of  $\frac{1}{2}$  to 8 [fol. 24] cents under the through rates.

The local rate, for example from Moronts, Illinois to Kankakee is 25 cents. It would naturally appear we were making a  $19\frac{1}{2}$  cent reduction in the rate; this, however, is not true as the through rates on grain products are lower than the combination of the local rates to Kankakee plus the reshipping rate beyond. This demonstrates that even prior to our adjustment local rates to Kankakee were not observed on corn products when the destination of the milled product was in Central territory.

Q. Mr. Tascik, will you describe what has been marked for identification as Exhibit No. 12?

A. My Exhibit No. 12 is a companion exhibit to the one that has just been introduced, that is, Exhibit No. 11, and Exhibit No. 11 shows what the situation would be at Kankakee under Agent Hinsch's applicable Tariff 413-T. The same rate situation would prevail if the transit took place at Danville, or any other point in Central territory where the transit application would be under the provisions of NYC Transit Tariff 10706-B.

I merely bring this out to show that the same rate situation would exist whether the transit application was under the provisions of the agency issue or individual lines' tariff.

[fol. 25] Q. What are the distances from these involved origin stations to Kankakee?

A. My Exhibit No. 13 shows the weighted average distance of the movements to Kankakee is 38.3 miles.

Q. What earnings do you receive on this rate per car and per car mile?

A. The weight of the corn to Kankakee runs approximately 110,000 pounds per car, producing revenue of \$60.50 per car, yielding earnings of \$1.58 per mile, per car mile. This represents additional revenue to the New York Central, which is in addition to the reshipping rate from Kankakee; as explained before, the reshipping rates from Chicago and Kankakee are the same and the Chicago reshipping rate applies via Kankakee.

Q. What is the rate application on ex-barge corn moving from Chicago to Kankakee for transit?

A. Ex-barge corn can be milled at Kankakee on basis of applying the Chicago reshipping rate. For example, the reshipping rate from Chicago to New York—and from Kankakee, too—is 54 cents, and this is the rate assessed on ex-barge corn Chicago to New York via Kankakee for milling.

The tariff mechanics are that the movement from Chicago to Kankakee is at a billing rate of  $61\frac{1}{2}$  cents per cwt., published in Tariff 701-A, ICC 1169, and on reshipment of the [fol. 26] milled product to New York  $61\frac{1}{2}$  cents is credited to this Chicago reshipping rate of 54 cents, resulting in a balance from Kankakee of  $47\frac{1}{2}$  cents per cwt.

Prior to the effectiveness, December 15, 1956, of the 5 cent rate on corn from our West End Stations to Kankakee, corn grown in the area contiguous to our West End Division could move by barge through Chicago via Kankakee at substantially lower charges than available for the rail movement from the involved territory through Kankakee, and this was due to the fact the barge rates to Chicago were lower than the rail rates to Kankakee.

Q. Mr. Tascik, you referred to a Chicago reshipping rate of 54 cents. To what destination does that rate apply?

A. To New York City or the New York rate basing point.

Q. You have described this routing. Do you consider such routing to be wasteful transportation, Mr. Tascik?

A. Yes. When corn, grown in our backyard moves to River elevators and then is barged to Chicago and shipped by rail back to Kankakee for a distance of 75 miles rather than a rail movement from the producing area of 39 miles is wasteful transportation.

Q. Mr. Taseik, could you refer to Exhibit No. 1 and explain [fol. 27] plain that statement by referring to the stations and lines of railroad and the River on Exhibit No. 1?

A. It will be observed from Exhibit No. 1 that the River parallels the New York Central West End stations and this corn would move by river into Chicago.

Chicago has the benefit of the reshipping rate when it moves through Kankakee. The movement would be from Chicago to Indiana Harbor down to Schneider, and from Schneider to Kankakee, a distance of 75 miles—I think it is 75 miles via the New York Central.

Now in contrast, this corn that moves by the River is drawn in great preponderance or in some preponderance from farms contiguous to stations on the New York Central Railroad.

Now if you look at this map from Union Hill to Kankakee as I have shown in my Exhibit 13, we have a haul of 14 miles contrasted to one of 75 miles from Chicago.

Similarly you have the same picture on every one of the stations from Kankakee to Moronts, Illinois, and based on our study of the traffic that has moved under our proportional rate, the weighted average distance of our movements is 38.3 miles.

So I think that demonstrates in itself that if we can handle this corn via Kankakee rather than let it move up [fol. 28] by barge to Chicago and then rail at Kankakee, that there is some wasteful transportation involved.

Q. Do you have an exhibit showing switching absorptions at Chicago by the New York Central on corn moved from Chicago to Kankakee for milling in transit?

A. Yes, my Exhibit No. 14 is a statement showing switching absorptions on this traffic. Based on the present absorption, the average per car absorption is \$23.10. The average absorption per 100 pounds is slightly in excess of two cents. As I pointed out before, on the traffic moving from West End stations to Kankakee, we receive  $5\frac{1}{2}$  cents more than



we would receive if we handled ex-barge corn from Chicago to Kankakee. When you consider absorption of approximately 2 cents per 100 pounds coupled with the  $5\frac{1}{2}$  cent rate, the arrangement produces  $7\frac{1}{2}$  cents which is the amount of additional net revenue the New York Central realized by handling the traffic on the proportional rate.

This added net revenue to the New York Central amounts to between \$80 and \$85 per car over what would accrue to the New York Central on corn moving from Chicago on re-shipping rates for transit and milling at Kankakee, Paris, Danville and Indianapolis for subsequent movement east [fol. 29] thereof. Thus by establishing a competitive rate the New York Central nets  $7\frac{1}{2}$  cents per 100 pounds of additional revenue and handles the car for but 39 miles as compared with the 75 miles from Chicago.

These factors were given important consideration in our determination to establish the proportional rate.

Q. Do you have an exhibit comparing rail distances from Chicago via Kankakee with rail distance from West End stations via Kankakee to representative eastern destinations?

A. Yes, my Exhibit No. 15 shows that the mileage from Chicago exceeds the distance from our West End stations via Kankakee from 3.73% to 20.61%.

Q. Do you have an exhibit showing what the percentages of the rates from Chicago and from the West End stations are of the Docket 28300 first class rates?

A. Yes. This is shown in my next Exhibit No. 16. It will be noted the through rates from the West End stations via Kankakee using the combination of the proportional rate to Kankakee and the reshipping rate related percentage-wise to the 28300 scale reflects a higher level than obtains from Chicago.

Q. Mr. Tascik, are there rates from West End stations that produce lower earnings than the combination we have [fol. 30] established by virtue of this  $5\frac{1}{2}$  cent proportional rate?

A. Yes. For example, from Dwight to New York, New York the combination is 59.5 cents, and to Boston, the combination is 61.5 cents.

There are export rates to New York and Boston of 54.5 cents, from these same stations.

We get 5 cents more on our combination to New York and 7 cents more on our combination to Boston than we get on Export traffic from Dwight to these ports.

Q. Is that 5 cents a hundred pounds and 7 cents a hundred pounds?

A. Yes.

Q. Do you have an exhibit showing the percentages of first class reflected by the at and east rates from Buffalo, New York, Erie, Pennsylvania and Oswego, New York?

A. Yes, my Exhibit No. 17 shows that the at and east rates range from 6.3 per cent to 9.5 per cent of the Docket 28300 first class rates. Our rates resulting from the proportional rate application at Kankakee, as borne out by my Exhibit 16 range from 12.3 to 17.9 per cent, reflecting a substantially higher level than the at and east rates which were approved by the Commission in proceeding covering [fol. 31] export grain-ex-lake from Buffalo to New York 292 ICC No. 647.

Q. Do you have an exhibit showing the grain rate to Port Cargill, Minnesota?

A. My Exhibit 18 is a statement comparing earnings under the New York Central 5½ cent proportional rate with the earnings under the 6 cent rate published by the Minnesota and Western Railway from Winsted, Minnesota to Port Cargill, Minnesota. The Minnesota and Western, in order to meet truck competition, established a 6 cent per hundred pound weight rate on shelled corn and other grain from Winsted to Port Cargill. This rate produces earnings of \$60 per car, based on loading of 100,000 pounds per car.

The distance via which the rate applies is 59 miles. The per car mile earnings are \$1.017. In contrast, the New York Central, on its proportional rate of 5½ cents based on a loading of 100,000 pounds earns \$55 per car, although our loadings aggregate in excess of 110,000 pounds.

On the weighted average distance of 38.3 miles from the origin stations involved to Kankakee, the 5½ cent rate on 100,000 pound load produces earnings of \$1.436 per car mile and on a 110,000 pound load produces earnings of

\$1.436 per car mile and on a 110,000 pound load produces earnings of \$1.58 per car mile. The per ton mile earnings [fol. 32] from the New York Central's proportional rate for the weighted average distance of 38.3 miles is 28.7 mills, while the per ton mile earnings from the Minnesota and Western's rate from Winsted to Port Cargill amounts to 20.3 mills.

Q. Please refer to your exhibits showing the barge movement of corn and grain to Chicago and explain what they show and how they were prepared.

A. My Exhibit No. 19 shows the barge shipments of corn from ports on the Illinois River to Chicago; it is a three-page exhibit showing a comparison between the amounts of corn shipped up the Illinois River by barge during significant periods in 1955-56 and the corresponding periods in 1956-57.

The first page of the exhibit represents a consolidated summary of the corn shipments by all barge lines operating on the Illinois River for the indicated periods. The second page of the exhibit is composed entirely of shipments by the Mechling Barge Company. The third page of the exhibit presents the same information based on the shipments by all barge lines other than Mechling.

The tonnage figures presented were not arrived at by any method of sampling but rather by a systematic study of the individual barge bills for the periods indicated. The [fol. 33] bills from which the tonnage figures were compiled are on file with the Eastern Weighing and Inspection Bureau, Grain office.

Q. Will you describe the significance of the periods selected?

A. The total shipments for each period indicated have been broken down so as to show the tonnage which originated from each of the ten ports listed in the exhibit. These ports have been selected because their geographical locations paralleled the New York Central's Kankakee Belt Route. These are the barge ports with which the New York Central must compete for the business.

Q. Mr. Tascik, are these barge ports also shown in your Exhibit No. 1?

A. Yes, they are.



Q. Will you proceed and explain the reasons why you selected the periods?

A. These periods were selected for the following reasons:

December 15, 1955 to August 30, 1956 and December 15, 1956 to August 30, 1957—it was on December 15, 1956 that the proportional rail rate on corn products became effective and it was on August 31, 1957 that notice was given to the public that the rate was enjoined pursuant to the temporary order of the Federal Court in *Mechling Barge Co. et al.* [fol. 34] By presenting the barge shipments for that period of December 15, 1956 to August 31, 1957 and also the barge shipments for the previous corresponding period, viz., December 15, 1955 to August 30, 1956 there is made available a comparison of the amount of corn shipped by barge when the proportional rate was in effect and the amount which moved by barge when it was not in effect. Significant is that the barges handled more corn tonnage during the period the rail competitive rate was in effect.

Now the periods August 31, 1956 to November 11, 1956 and August 31, 1957 to November 11, 1957 were selected because on August 31, 1957 notice that the reduced rate was enjoined was given to the shipping public. After that date it cannot be contended that barge shipments were affected by the 5½ cent rate.

It was thought necessary to show the barge shipments made after that date so as to indicate how barge shipments of corn in 1957 compared with shipments in 1956 during a period which was unaffected by the competitive influence of our 5½ cent rate. November 11, 1957 was taken as the cutoff date for this period because it was the last date for which complete barge billing was available for the purpose of compiling this exhibit.

The proportional rate was not in effect during either of [fol. 35] these periods in 1956 or 1957. Therefore, it is obvious the rail proportional rate played no part in barge line lesser handling in the period August 30-November 11, 1957.

The periods December 15, 1955 to November 11, 1956 and December 15, 1956 to November 11, 1957 represent a com-

parison of the shipments made during the combination of the two period referred to in the first four columns of the exhibit.

My next Exhibit No. 20 shows barge shipments of grain from ports on Illinois River to Chicago; it is a three-page exhibit showing a comparison between the amounts of grain, exclusive of corn, shipped up the Illinois River by barge during significant periods in 1955-56 and the corresponding periods in 1956-57. The "grains" used for this survey include wheat, soy beans, barley and oats.

This exhibit was prepared in the same manner as explained in connection with the presentation of Exhibit 19. Significant is that this exhibit excludes corn, and consequently the tonnage reflected in this exhibit was in no way affected by the establishment of the proportional rate on corn to Kankakee; it shows that the barges handled less grain, other than corn, in 1957 than in 1956 and this decline [fol. 36] cannot be attributed to the establishment of the proportional rate involved in this proceeding.

Moreover the increase in corn tonnage was of such magnitude as to more than offset the decrease in other grains handled, so that the net effect is that the barge shipments of all grain to Chicago in 1957 exceeded the shipments in 1956.

Q. Do you have an exhibit showing routes and earnings via departure routes to New York as a representative destination and also showing routes and earnings from the highest rated and lowest rated intermediate origins via the departure routes?

A. Yes, my Exhibit No. 21 shows this.

Q. How long have the rates from the intermediate origins shown been in effect?

A. The rates from the intermediate origins are the old McGrahaam formula rates, unchanged except for general increases or decreases.

I have been in this rate legislative end of the business for 35 years, and to my knowledge they have always been in there.

Q. Mr. Tascik, you have described the barge competitive situation west of Kankakee. Do you have the barge com-

petitive situation at intermediate points in the Eastern territory intermediate origins?

[fol. 37] A. I don't follow you on that question.

Q. Well, do you have barge competition from the origins east of Kankakee, say in Indiana, for example?

A. No, I do not.

Mr. Murphy: Thank you. That is all on direct of Mr. Tascik.

Exam. Dahan: Do you have any questions, Mr. Bradford?

### Cross examination.

By Mr. Bradford:

Q. Mr. Tascik, you stated the 5½ cent proportional rate to Kankakee only applied on corn milled in transit Kankakee and east, is that correct?

A. That is correct.

Q. Does that same restriction apply in connection with the reshipment rate applied to the ex-barge grain?

A. No.

Q. To that extent ex-barge grain still has an advantage?

A. That is correct.

Exam. Dahan: Any other direct evidence?

Is the witness available for cross examination?

Mr. Murphy: Yes.

Exam. Dahan: Would you like to have a five minute recess?

Mr. Hayes: Yes, sir.

[fol. 38] (Brief recess.)

Exam. Dahan: Come to order, please.

The witness is available for cross examination.

Which of protestants' counsel desire to proceed first?

Mr. Hayes: I should like to ask a few questions in the interest of some of these country elevators in this territory where this grain originates.

Exam. Dahan: Very well, Mr. Hayes.

Mr. Hayes: Mr. Legg will examine on behalf of the Meehling Barge Line Company.



# Cross examination.

By Mr. Hayes:

Q. What is your title with the New York Central Railroad?

A. Freight Sales Manager.

Q. Is your work with the railroad that you are employed by devoted to the development of new traffic?

A. My work entails not only development of new traffic but to hold whatever traffic we are now handling on the railroad, to the railroad.

Q. Does that statement cover the scope of your duties and employment and specialization with the railroad?

A. No.

Q. Then make a statement that does.

A. What was your question again, Mr. Hayes?

[fol. 39] Q. Is there anything in the way of your responsibility for which you are employed by the railroad that you have not mentioned?

A. Well, the matter of industrial development is part of it and that is traffic development; the matter of rate legislation, adjustment of rates, that is traffic development.

There are any number of phases in railroad business that we have to go ahead and work with that develop traffic.

Q. I am talking about your own responsibility.

A. They are my responsibility.

Q. Have you mentioned specifically those that are your responsibility?

It is a very simple question, Mr. Tascik. I want you to detail the general leads that you have mentioned.

When you say that your business is to develop new traffic and keep the traffic you have got, that is the area of your responsibility and employment and specialization with the New York Central Railroad?

A. Yes.

Q. My questions are very simple. You needn't try to look for hidden meanings in them, sir.

Mr. Murphy: I am sure the witness is not looking for [fol. 40] hidden meanings, Mr. Hayes. He wants to be sure of what you are saying.

Mr. Hayes: The witness and I are getting along fine, Mr. Murphy.

By Mr. Hayes:

Q. Now will you tell me, sir, what railroad lines go east from Kankakee to destinations in official territory, without going via Chicago?

A. What railroad lines go east without going through Chicago?

None that I know of except the New York Central from Zearing through Kankakee, and that operated through Chicago.

Q. I think you confused the picture a little bit by your last clause. You said, "and that operates through Chicago."

The New York Central is the only line, is it not, that moves from these origin stations through Kankakee east to destinations in Official territory without going through the Chicago switching district?

A. No, that is not a correct statement.

If we are talking about freight rates, there are any number of freight rates that operate through Chicago from this involved territory to the east.

Q. I know there are any number of railroads that operate through Chicago to this territory in the east and your [fol. 41] answer shows, I think, that you did not understand my question.

Will you please listen to the question?

Mr. Murphy: Read the question back.

By Mr. Hayes:

Q. What line or lines of railroad are there that go from these origin stations here involved that you have mentioned on the New York Central through Kankakee to destinations in Official territory that do not go through the Chicago switching district?

Name them.

A. None that I know of.

Q. Doesn't the New York Central?

A. Well, the New York Central we expected. I have said that the New York Central does.

Q. It is the only one, isn't it?

A. Well, the Illinois Central lies in that area, so I would have to put the Illinois Central in the same category as the New York Central.

Q. Mr. Tascik, lines of the Illinois Central Railroad do not go, let us say, to Eastern and New England territory, do they?

A. No, they—the Illinois Central terminates at Chicago and Indianapolis.

Q. Then if you were to answer my question correctly and directly, the one I have asked you so many times, the fact [fol. 42] is, is it not, that the New York Central is the only railroad serving any of the stations mentioned in your exhibits that goes through Kankakee and east to destinations in Official territory?

A. That is right.

—Q. Do the depressed rates here proposed by the New York Central—

Mr. Murphy: I object to the characterization, your Honor.

Exam. Dahan: Objection sustained. You don't have to characterize the rates in issue.

By Mr. Hayes:

Q. Do the Fourth Section departure rates—

Mr. Murphy: That is another characterization, your Honor.

Mr. Hayes: They are so characterized in the application, your Honor. If they weren't that, we wouldn't be here.

May I proceed?

Exam. Dahan: Go ahead.

By Mr. Hayes:

Q. Do the Fourth Section departure rates here proposed by the New York Central apply via Chicago?

A. On corn for transit, the answer is yes.

Q. Are there any rates involved in this proceeding ac-



[fol. 43] cording to your understanding other than rates for corn in transit?

A. I just thought I would qualify it. There are no others as far as I know at this time.

Q. Well, when the direct answer is an unqualified answer, please give it to me.

Do the Fourth Section departure rates proposed here by the New York Central apply via Chicago?

A. Yes.

Q. Now will you tell me, sir, please, what lines of railroad go east from Chicago via those lines and routes and rates here in question that you have referred to as the 51½ cent rate would apply?

A. By all lines east of Chicago—do you want me to name them? It would be the Pennsylvania, The Nickel Plate, The Erie, The B&O.

Exam. Dahan: It wouldn't be necessary to name them. Just answer the question.

By Mr. Hayes:

Q. Does it occur to you, sir, that the diversion of corn—On whose behalf is the Fourth Section application presented?

The Witness: May I have the question?

(Question read.)

The Witness: On behalf of the New York Central Rail-  
[fol. 44] road and Eastern lines.

By Mr. Hayes:

Q. By that "Eastern lines," do you mean those roads that run east from Chicago via whose routes this 51½ cent Fourth Section rate would apply?

A. Yes, all railroads parties to Tariff 245 and 335.

Q. You mentioned some kind of a study in connection with your decision to try to get these rates. Was that a study of the effect of the proposed rates on the amount of corn that would move via the Kankakee Belt Line of the New

York Central Railroad, namely its line from Moronta to Kankakee?

A. Yes, there was a study.

Q. Was that what the study was?

A. Yes.

Q. Do you have in the organization or does your company have in its organization—was that study made by you?

A. Under my direction.

Q. And in your department?

A. Yes, sir.

Q. Does it occur to you, sir, that—

Was the object of that decision to put in Fourth Section departure rates, if you could, to get corn traffic that had theretofore been moving to Chicago by barge onto the lines of the Kankakee Belt of the New York Central?

[fol. 45] A. Yes. The study was undertaken for one purpose, to develop some business for the Central from this agricultural area that was moving almost entirely by barge.

Q. When it moved by barge, it went to Chicago, didn't it?

A. Yes.

Q. And not to Kankakee?

A. That is right, and transported back to Kankakee, right where it grew.

Mr. Hayes: There is a question pending, Mr. Witness.

The Witness: What was the question? Q

(Question read.)

The Witness: No, but it is quite a substantial movement, several hundred cars.

By Mr. Hayes:

Q. Did you ever count up those cars or make a study of how many they were that came in to Chicago ex-barge and then moved down to Kankakee that you say so moved?

A. Yes. In fact—

Q. Where is that study?

A. Exhibit M is just a typical example of part of the movement.

Mr. Murphy: When you refer to Exhibit M, Mr. Tascik, what is the number?

[fol. 46] The Witness: Exhibit 14, sir.

By Mr. Hayes:

Q. Let me ask you, sir, where on Exhibit 14 are we to find what part of the traffic there reflected came into Chicago by barge and what part came into Chicago by rail, including the lines of such railroads as the Northwestern, and what part came into Chicago by lake?

A. I don't have this breakdown, but it is self evident that with the corn movement by barge as shown in my exhibits, that certainly a great portion of the corn moving from Chicago to Kankakee and east had ex-barge billing behind it.

Q. Do you know what the receipts of grain in Chicago were in the period covered by your Exhibit 14 by all means of transportation?

A. Not at the moment, no.

Q. Well, you said something was self evident, and some of us might not agree with you on that.

Now referring to the grain that came into Chicago by barge and that you put these rates in to get it onto the New York Central's Kankakee Belt, what part of that grain that you were trying to get went east from Chicago without coming to Kankakee?

A. A good share of it did, probably.

Q. Well, the great majority of it did, didn't it? That is [fol. 47] self evident, isn't it?

A. Yes, I will agree with you on that.

Q. Actually you really don't know how much, if any, of the grain that came into Chicago by barge went down to Kankakee?

A. All I know is that there was billing behind every car that went down to Kankakee and that the majority of it was ex-barge billing behind it, because I have looked at those bills.

Q. Well, what percentage, sir? Where are they?

A. I can't give you the percentage.

Q. Pardon me?



A. I can't give you the percentage?

Q. Can you tell me what percentage of that movement which you say had those bills behind them was of the total barge movement into Chicago?

A. I can't tell you.

Q. I notice that your Exhibit 14 refers to grain. That is, the exhibit we last referred to in justification of your assertion, I think, that there was some of the ex-barge grain that moved to Kankakee—is that 14?

A. For clarification, Exhibit No. 14, if I say movements of grain, I should say movements of corn.

Q. That is what you do say, you say movements of grain.

[fol. 48] A. This is corn going to General Foods. I don't mind telling you that.

Q. Exhibit No. 14, does that show movement of grain to General Foods processing plants in Kankakee?

A. Yes.

Q. That is what that shows?

A. That is, yes.

Q. And that only?

A. That only, and they are only corn users.

Q. That is the General Foods that is an intervener here in support of this application, isn't it?

A. Yes, sir.

Q. I refer again, sir, to your statement as to the purpose of these Fourth Section rates to divert corn from the water movement into Chicago to the Kankakee Belt of the New York Central Railroad, and I refer also to your statement that the New York Central is the only line of rail that goes eastbound from Kankakee to destinations in Official territory without going through the Chicago switching district, and I will ask you if grain that comes into Chicago by barge, when it moves to destinations in Official territory, moves exclusively on the line of the New York Central Railroad?

A. No.

[fol. 49] Q. But when it comes from this area to Kankakee, a substantial part of it goes directly east to destinations in Official territory and can only go or can only start, by the New York Central, at least, that is true, isn't it?

A. Yes. That was a very important consideration because in this case here we were making 5½ cents to Kankakee and we were saving the absorption in Chicago. As I pointed out in my testimony, that netted us 7½ cents more than we were earning through Chicago.

If it wasn't for these elements, the rate would probably never have been established. It was this added revenue that was of such vital interest to us that resulted in our establishing this proportional rate.

Q. Have you made any study of the effect of change of traffic which you last described and also earlier referred to resulting from these Fourth Section departure rates on the revenue of the other eastern railroads prior to filing your application or since?

A. All I know is that when we made ourselves competitive with the barge route, we attracted business to the New York Central Railroad which was the objective for establishing the rates, and the traffic moved east.

[fol. 50] My concern is with the New York Central. I don't know what traffic any other railroad might have lost; my one concern was to get traffic for the New York Central.

Q. Thank you, sir.

Having said that, would you mind giving me—I am obliged for that explanation, but having said that, would you mind answering directly the question I just asked?

Read the question.

(Question read.)

Mr. Murphy: I think the question has been answered.

Mr. Hayes: That question is very simple and susceptible of a simple and direct answer.

Exam. Dahan: Is that your answer to the question?

The Witness: I have answered what I think was a proper answer to the question.

No, I don't know what effect it would have on the revenues of other railroads. Certainly when we made ourselves competitive, we picked up some business that did not go to the Chicago market, and that moved, that business moved east from Kankakee, and because it moved east from Kankakee, we earned \$85 a car additional over and above what we

would have earned from Chicago had we had the haul from Chicago.

[fol. 51] Mr. Bradford: Mr. Examiner, in order to get a clear understanding of what counsel is asking, may we ask him to describe what he means by "Eastern roads"?

Exam. Dahan: Would you describe what you mean by "Eastern roads"?

Mr. Hayes: Well—

By Mr. Hayes:

Q. What did you understand me to mean, Mr. Witness?

Mr. Bradford: I don't know. That is the reason I asked.

Mr. Hayes: I am asking the witness.

The Witness: I understood your question, Mr. Hayes, that the business that the New York Central handled was business—

Mr. Hayes: Excuse me, sir, you are not answering responsively to the question. I last asked you and I wish you would.

What did you understand me to mean by "Eastern railroads"?

The Witness: Eastern railroads—

Mr. Bradford: That is what he is trying to tell you.

The Witness: Eastern lines are all lines operating east of Chicago.

By Mr. Hayes:

Q. Now,—

[fol. 52] Mr. Hayes: I am getting along wonderfully with the witness.

Mr. Bradford: You are getting along all right with me, too.

By Mr. Hayes:

Q. And you would give the same answer, I take it, as to the understanding Eastern railroads to mean those who are parties to this application in presenting it here?

A. That is right.



Q. You are not a cost man, are you, Mr. Tascik?

A. No, sir, although costs enter into the determination of rates we establish.

Q. But you yourself are not a cost man?

A. No, sir.

Q. And you don't handle that end of it?

Is that your answer?

A. Yes, sir.

Q. I suppose, then, you didn't make any cost study of this situation before filing the application?

A. Well, it was self evident to me that this 5½ cent rate plus what I saved on the absorption charge at Chicago netted me 7½ cents more than if I handled this traffic from Chicago, so you don't have to be a cost expert to see when you can make \$80 to \$85 additional and for handling a car lesser distance, that it is profitable.

[fol. 53] Q. To follow the suggestion that you just made now for a moment, you started another rabbit there out in back of my question.

You actually put in this rate with the idea of getting away from having to take this grain through Chicago, is that right?

A. Actually with the intent of hauling the grain from the country origins west of Kankakee to Kankakee and east thereof to the greatest extent possible.

Q. Without going through Chicago?

A. Without going through Chicago.

Q. But your rate applies via Chicago?

A. It does, yes.

Q. Why?

A. It has been that way for 35 years. Your Kankakee and reshipping rates have always been on an equal basis and your rates apply either from Kankakee through Chicago or from Chicago through Kankakee.

Q. I understand you. I think I understand you very well. The water transportation is to Chicago, isn't it?

A. Yes.

Q. And the transportation you are trying to develop was to and through Kankakee to eastern destinations without going through Chicago?

[fol. 54] A. Nothing wrong about that. That is exactly what I had in mind.

Q. Now getting back to my question about the cost studies, I asked you if you made a cost study. Do you want to save time and state frankly that you did not make a cost study?

A. No, sir, because I did not think it was necessary.

Q. Well, then, you didn't make a cost study because you didn't think it was necessary?

A. No, because \$85 added revenue spoke for itself.

Q. Tell me, please, Mr. Witness, whether you did or didn't make a cost study?

A. No, I said no.

Q. All right.

Now, did anybody else make a cost study that you know of?

A. No.

Mr. Hayes: May I have a few minutes, Mr. Examiner? I mean to go on, obviously, but I should like three minutes at this point, if I may have them.

Exam. Dahan: Very well. You may have them, you may have three minutes. We will go along with another examination.

### Cross examination.

By Mr. Legg:

Q. Mr. Tascik, do you have any figures at all indicating [fol. 55] how much of this corn coming into Kankakee from the Kankakee Belt stations on the 5½ cent rate goes through Chicago on its way to its eastern destination?

A. Well, I can answer your question in this manner, that I don't mind telling you that during the period this rate was in effect, we originated 2411 cars of which 20 per cent went into Chicago and of this 20 per cent the preponderance of it was corn under government CCC programs, and therefore the 5½ cent rate had no effect on the movement.

Q. You don't know what percentage that was?

A. No, but I can tell you that I don't believe there were

more than 15 or 20 cars that moved through Chicago on which the 5½ rate applied. At least that was what I developed up until a few months ago.

Q. For what period was that study?

A. For the first six months of 1957.

Mr. Murphy: Were your total figures for the first six months, sir, the 2400 cars?

The Witness: No, that was for the entire year, the 2411 cars.

By Mr. Legg:

Q. For the entire year 1957?

A. 57, yes.

Q. And the 15 or 20 cars were for the past six months?

[fol. 56] A. For the first six months.

Q. You don't know how many were sent through in the last six months?

A. No, I haven't made a check in the last six months. It wasn't very much, I can tell you that.

Q. Would it be in the order of 15 or 20 more cars?

A. Possibly. I don't know. I couldn't tell you.

Q. You just don't have any idea at all?

A. No.

Mr. Hayes: Did he say he did not have any idea?

By Mr. Legg:

Q. You agree you have no idea?

A. I don't know how many cars. I didn't make a check in the last few months.

Mr. Hayes: And have no idea?

Mr. Murphy: Mr. Hayes, this follows after a number of other questions.

Mr. Hayes: Yes, I know what they are.

Mr. Murphy: Did you hear the answers, sir?

Mr. Hayes: Let's hear the answer to my question.

The Witness: Yes, that is right. That is my answer.

Mr. Hayes: You have no idea?



The Witness: Yes, because the rate was enjoined, and I don't know what happened since the rate was put back in effect, I haven't made a study.

[fol. 57] By Mr. Legg:

Q. Mr. Tascik, referring to your Exhibit 19, you have included the three stations or elevators at Henepin, Henry and Lacon in that exhibit, that is correct, isn't it?

A. Yes.

Q. Have you any idea what the normal movement of corn from those elevators is? Do you know how it ordinarily is transported?

A. No, I do not.

Q. Or in what direction it goes?

A. No.

Q. Do you know whether it would go down river or up river?

A. I know this particular grain moved through Chicago or to Chicago.

Q. It moved to Chicago in this year, the particular grain listed moved to Chicago for the periods listed in this exhibit, is that true?

A. That is right.

Q. You do not know how much ordinarily moves to other points from these same three stations?

A. From these same three stations, no. I wasn't interested in developing that because I was thinking about my own eastern situation.

Q. You do not know, then, whether the barge lines have [fol. 58] carried as much corn from these three stations either north or south in the period December 15, 1956 to August 30, 1957 as they did in the period December 15, 1955 to August 30, 1956?

A. No, I do not.

Q. And if you eliminated those three stations from the exhibit, would not the exhibit show a substantial decline in the amount of corn hauled by the barge lines from the other remaining stations to Chicago for the period December 15, 1956 to August 30, 1957 below that hauled during the period December 15, 1955 to August 30, 1956 from these stations?

A. Whatever the addition would produce would be the result, but I don't see where you can just use the tonnage factor for Henepin, Henry and Lacon without taking into consideration the tonnage factor from the other stations shown on the exhibit. You have increases and decreases on them, too.

Q. I think, Mr. Tascik, you have misunderstood my question. If you eliminate the three stations of Henepin, Henry and Lacon from the exhibit, would not the remaining stations show a decline for the latter period than they do for the earlier?

Mr. Murphy: You are referring to columns 1 and 2, Mr. Legg?

[fol. 59] Mr. Legg: I am referring to columns 1 and 2.

Mr. Murphy: Will you do that arithmetic, Mr. Tascik, please?

To shorten this up, Mr. Legg, I compute that there was a 60,000 ton increase at those three ports as compared with a 91,000 ton increase at the other ports, so I think the answer would be contrary to what you expected.

Mr. Legg: Would you make the same computation now on page 2 for the shipments by Meechling Barge Line?

Excuse me. Will the witness accept Mr. Murphy's answer?

The Witness: Yes, I will.

Mr. Legg: All right.

The Witness: I don't know how accurate these figures are, but I come up with column 1, eliminating the last three stations, 140,670 to 129,094.

Is that what you come up with?

Mr. Murphy: What page of the exhibit?

The Witness: Page 2 of the exhibit.

Mr. Legg: Page 2, columns 1 and 2.

I don't come up with anything close to that, no.

Exam. Dahan: I am just wondering whether it is necessary to ask the witness on the stand to sit down and make computations.

[fol. 60] If computations can be made from any exhibits, I would prefer that the person put it on in his own direct evidence so that we can save a lot of time. If we are going to sit down and have the witness compute this and compute

that, we will be here for weeks, unless it is absolutely necessary for the question.

Matters concerning computations and figures from exhibits, we would like to have those put on on direct examination and if the other party wants to put on rebuttal evidence, they may do so.

Mr. Legg: May I say this, that my own computation, Mr. Examiner, shows a decline in the latter period of—it shows an elimination in the latter period of 77,052 tons and for the earlier period an eliminating of only 25,702 tons, leaving a net decline for the latter period by eliminating these three stations of 51,352 tons.

I would like to have those in the record subject to check by the parties.

Mr. Murphy: I object to that. I mean, he can make these computations on brief. I don't want to be stuck with something that is a hasty calculation when we have no opportunity to check it that fast.

Mr. Legg: They are subject to check, Mr. Examiner.

Exam. Dahan: What is the purpose now that you want [fol. 61] them in for? Do you have a particular question you want to direct to the witness with respect to the figures and computations you have made, or are you just trying to—

Mr. Legg: No, I don't have any further questions along that line.

Exam. Dahan: All right. Go ahead.

By Mr. Legg:

Q. Could you tell me the barge lines whose shipments are included in page 1 of your Exhibit 19?

A. Well, these exhibits were made under my direction from bills on file with the Eastern Weighing Inspection Bureau here at Chicago, and when it was made up, it was segregated as between Mechling and the other barge lines. I just can't tell you because I didn't make up the exhibit personally.

Q. You don't know who the other barge lines are?

A. No.



Q. Can you ascertain that and advise me at a later time during the hearing?

A. I presume we can, yes. There are work sheets in the office.

Q. Mr. Tascik, is there a more direct route to Kankakee from Chicago than the route which you mentioned in your testimony running through Indiana Harbor and Schneider?

[fol. 62] A. Oh, yes, the Illinois Central is a more direct line. I think their mileage is somewhat lower, yes, but it doesn't—it isn't doing the New York Central any good.

Q. Is the Illinois Central a party to this Fourth Section application?

A. In so far as it applies to official territory.

Q. Mr. Tascik, have you any information at all about the sources of the corn which comes into the elevators along the Kankakee Belt west of Kankakee?

Do you know in what areas that corn originates at the present time?

A. Moving all rail?

Q. Moving all rail.

A. From the territory surrounding that particular station.

Q. Do you know how far out the station draws corn?

A. No.

Q. Do you know how many miles the farmer will truck to a particular elevator in order to get this rate?

A. I don't know. All I know is that I am dealing with an elevator that is right adjacent to the railroad tracks. Where he gets his corn from, I don't know.

Q. You don't know whether any corn might be coming from east of Kankakee to a station west of Kankakee in order to take advantage of this 5½ cent rate and the pro-[fol. 63] portional from Kankakee on?

A. Well, I think the economics of trucking would dictate how far they would truck grain. I couldn't tell you. All I know is that I certainly am interested in the transportation from a transportation standpoint and my business originates right in that elevator.

Q. I see. You are concerned about the economy of transportation—you are not interested about the economy of

transportation if it has to be trucked from east of Kankakee to west of Kankakee and then run back by rail; you are only interested in the economy if it goes to—

Mr. Murphy: I object to the argumentative question, your Honor.

Mr. Legg: I think it is—

Mr. Murphy: It sounds like a statement. It doesn't sound like a question at all.

Mr. Legg: The witness has stated, Mr. Examiner, that he was concerned—

Exam. Dahan: If he has stated on the record, that is, then we don't have to go along and try to get the answer.

Mr. Legg: He stated he was concerned about the uneconomic transportation between Chicago and then back to Kankakee. He doesn't seem to have the same concern—

[fol. 64] Mr. Murphy: That is argument.

Mr. Legg: I was questioning whether he had that same concern—

Exam. Dahan: Do you have a question?

Mr. Legg: I certainly would like to know whether he is concerned about that.

The Witness: You are making it a parallel Chicago to Kankakee versus trucking to the elevator at Kankakee?

Mr. Legg: No.

The Witness: Or trucking to elevators on the west end stations, is that it?

Mr. Legg: That is right, from east of Kankakee.

The Witness: All right. Now in the case of Chicago to Kankakee, I have a transportation factor involved. I am talking about the New York Central now. Whether it is wasteful transportation or not, we have a factor there involved.

In the case of the elevator, I am not involved to the same extent because all I have there is the transportation from the elevator to Kankakee, and my parallel is what is the difference from that elevator to Kankakee versus Chicago to Kankakee.

Q. You don't know how far they are trucking, though, to the elevator from the farms or from what directions?

A. No, I wouldn't be able to tell you. The elevator operator would have to tell you that.

Mr. Legg: Will they be here to testify, Mr. Murphy?

Mr. Murphy: We will have some.

By Mr. Legg:

Q. Mr. Tascik, are you familiar with all of the traffic that moves over the Kankakee Belt line of the New York Central?

A. I am, yes.

Q. Could you describe that traffic for us briefly?

A. I don't have the destinations and the origins, but I think this will satisfy what you are after: During the year 1956 the New York Central had a substantial movement of crushed stone from Lehigh, Illinois, and I testified to that effect.

During the year 1956, the New York Central had a movement, a fair movement, I will say, in the neighborhood of about 1,000 cars, from Streator, Illinois, and I testified there were concerns in Streator doing business.

Q. I beg your pardon. Now that is from Streator to the east?

A. That is right. Now in contrast—

Q. You say that is about a thousand cars?

A. Yes.

From Blair, not a car in '56; Budd, not one car in '56; Dwight, not one car in '56; Granville, not one car in '56; [fol. 66] Lostant, not one car in '56; McNabb, three cars in 1956, and they were telegraph poles; Missal, not one car in '56; Moronts, not one car in '56; Priscilla, not one car in '56; Reading, not one car in '56; Smithsburg, not one car in '56; Union Hill, not one car in '56; and Van's Siding, we had a movement of sand from the sand pit at Van's Siding.

Q. Were those all eastward movements, now?

A. Those were eastward movements.

Q. What westward movements did you have?

A. I didn't check the westward, but it would be the same situation. There is no traffic at those stations, to be frank with you.

Q. Is there any substantial traffic to Streator westward?



A. I mentioned that the Streator business amounted to about 1000 cars in 1956.

Q. You said that was to the east, though?

A. To the east.

Q. What about to the west?

A. To the west, I didn't check that down there, but—

Q. You haven't any idea?

A. No, but it isn't substantial, I can assure you, because the movement out of Streator is mostly glass from the Owens Illinois Glass plant, and that of course doesn't [fol. 67] result in any inbound business for us.

Mr. Murphy: Mr. Legg, when you are referring to originations of eastbound movements, you mean origination of traffic moving to those stations?

Mr. Legg: Eastbound.

Mr. Murphy: It would be originating?

Mr. Legg: Well, let me ask this:

By Mr. Legg:

Q. You were referring to originations?

A. Originations going east.

Q. So far as destinations at these stations westbound, was your answer based on that assumption?

A. Westbound, I do not have the figures here with me, but I did say the same picture would hold true westbound as it does eastbound; but westbound you would have no stone going to Lehigh, you would have no movement westbound, you would have no sand going in to Van's Siding, so of course that movement wouldn't be there. The preponderance of your traffic would be eastbound because you use sand in making glass and that glass would come in via a western line into Streator.

Q. Do you have any movement to Streator to make connections with other lines?

A. Interchange?

Q. Yes.

[fol. 68] A. Oh, yes, we have interchange points.

Q. Is that movement substantial?

A. I don't have these figures with me, but the Kankakee Belt as you know what that was designed for, it was de-

signed to bypass the Chicago gateway and naturally we do have an interchange of business at some of these junctions.

Q. Could you name the junctions at which you do have interchanges?

A. I don't have the Kankakee Belt here, but I can start out with Zearing, which is CB&Q, it is not involved in this proceeding;

At DePue, you have the Rock Island;

At Streator, you have the Santa Fe;

At Dwight, you have the Alton;

At Reddick, you have the Wabash;

And at Kankakee, the Illinois Central.

Q. Do you have a connection with the Chicago, St. Paul & Milwaukee at Ladd?

A. Yes, at Ladd, but there isn't any traffic moving through there. The Kankakee or the Milwaukee junction for handling business over the Kankakee Belt is Delmar, that is the junction via which the traffic moves.

Q. The interchange of traffic consists entirely of loaded [fol. 69] cars, does it not?

A. No, I don't know. Interchange business would be loaded and empty cars.

Q. It would be both loaded and empty?

A. Yes.

Q. And some less than carload freight as well as full carload freight?

A. It would be a carload as far as the interchange is concerned. If it is a merchandise car, it would be a carload of freight that was interchanged.

Q. If it were not a merchandise car, then what?

A. Well, I am assuming you are talking about a trap car, or, we will say, a transfer car from one house to another. It is still, as far as the physical interchange is concerned, a carload of freight.

I am talking about handling a car. It makes no difference if it is LCL in there or whether it is grain in there or bolts, or bottles, whatever you want to put in there, it is still a car.

Q. All you are doing, though, is carrying the car to the interchange line and delivering it to them?

A. That is right, but you don't want to give any impression that you have any LCL originating in any of these stations, because you don't have any agents at three-fourths of these stations because there is no business.

[fol. 70] Q. You are certain, though, that there is no traffic destined to these stations from the east?

In other words, there is no traffic coming from the east to the stations involved in this application with the single exception of Streator?

A. I told you that I didn't make a check, but the situation would be substantially the same. I haven't got the exact detail, but if we came down to actual figures, I will be glad to present it to you here for the record if you want it, because you would even have a poorer showing westbound than eastbound because you don't have the stone moving out of Lehigh, you wouldn't have that westbound, you wouldn't have the sand from Van's Siding, so that would disappear.

So about the one items you would handle would be into Streator, and if you would like to have those figures for the record westbound, I would be glad to furnish them for you.

Q. Could you give us the class of equipment also?

A. I will be glad to do that for you.

Q. Do you know where the New York Central maintains yard operations along the Kankakee Belt?

A. Yes, Kankakee, Illinois.

Mr. Murphy: I might say possibly for the assistance [fol. 71] of counsel we will have an operating man who can describe the operations if you want to hold such questions for him.

By Mr. Legg:

Q. Mr. Tascik, have you made any study of the effect of the 5½ cent rate on the shipments of corn on other rail lines in this Kankakee Belt area?

A. There was no corn moving to the other rail lines.

Q. I beg your pardon. Would you answer my question yes or no?

A. You are talking about originating on foreign lines in this territory now or on the New York Central?



Q. I am talking about originating on other lines than the New York Central. Have you made a study?

A. I don't know. I would have no access to their records. I don't know.

Q. You have made no study, you have no knowledge?

A. No.

Q. You have made no—you stated in your direct testimony, did you not, that barge-rail combinations together amounted to a lower rate than the local rate from Chicago and from Kankakee also, of course, to eastern destinations?

A. Yes, the local rate from Chicago to New York is 71½ cents; from Kankakee it is 71½ cents.

[fol. 72] Q. And the barge-rail combination to New York would be how much from, say, Morris, Illinois, via Chicago?

A. Well, it would be the barge factor.

Q. It would be lower than the local rate?

A. Yes, I stated that.

Q. That is what I meant.

A. I said that in the direct testimony.

Q. Is this departure protected by a Fourth Section authority from the Interstate Commerce Commission?

A. Actually the barge rates don't require Fourth Section relief, and that is where our disability comes in. The barge factor up to Chicago is of no concern. It is the Fourth Sections on the rates from Chicago as an origin and destination.

Q. The Fourth Section order, though, giving authority for the maintenance of the proportional rate from Chicago and also allowing their application on ex-barge corn, too, has been issued by the Interstate Commerce Commission?

A. Yes, it has.

Q. Has any such order been issued by the Interstate Commerce Commission with respect to corn moving from these stations on the Kankakee Belt west of Kankakee via Kankakee to eastern destinations?

Read the question.

[fol. 73] (Question read.)

By Mr. Legg:

Q. At the 5½¢ cent rate and the proportional rate from Kankakee beyond?

A. Yes, an order has been issued in this proceeding.

Q. Prior to that order had any authority been received from the Interstate Commerce Commission?

A. No, and I explained why in my testimony. We didn't think it was necessary.

Q. You did not ask for it?

A. That is right.

Q. Are the through rates from these stations west of Kankakee to eastern destinations also protected by Fourth Section authority?

A. Yes.

Q. Could you give me the order?

A. No, I don't know. I would have to go ahead and get the Tariff 68, and whatever the Tariff is, it speaks for itself. The rates are in WTL 68-R.

Q. Mr. Tascik, I notice in your Exhibit No. 13 you show the great preponderance of cars originating from the stations at Union Hill, Blair and Dwight.

Have you any reason for that preponderance in origination? Do you know of any?

A. No, but I couldn't account for it. Probably there has always been a corn movement, but if you want to refer to [fol. 74] Exhibits 4 and 5, you will find the same situation prevailing and I presume there is more corn grown in that territory.

Q. Do you know how much corn has moved to Chicago via the Alton Railroad from Dwight since this rate went into effect?

A. No, I don't.

Q. Do you know what the Alton Railroad's rate from Dwight to Chicago is on corn?

A. No.

Q. Do you know that it is more than 5½ cents?

A. I would assume it is, yes, and it is probably not handling any corn on it, either.

Q. You told me earlier, I thought, that there was no traffic originated in the year 1956 from the stations of Union Hill and Dwight and Blair.

A. Other than grain.

Q. Other than grain?

A. That is what we were talking about.

Q. I see.

You did originate grain from these stations, then?

A. Oh, yes, the exhibit shows it. Exhibits 4 and 5 speak for themselves.

Q. There is no conflict, then, between—

A. No.

[fol. 75] Q. —between your testimony?

A. No.

Q. How much grain other than corn originated from these stations in 1956?

A. I gave you those figures from every station.

Mr. Legg: I have no further questions at this time.

Exam. Dahan: All right.

By Mr. Hayes:

Q. You made some reference in your direct testimony to export rates. Do you think those should be taken as the measure of the proper level of domestic rates?

A. The proportional rate on—yes, I think it could be taken as a measure of the level of rates, yes, it should be.

Q. If you did that, sir, on all New York Central rates, it would work a very substantial diminution, depressing result in your level of domestic rates, would it not?

A. We have no intention of applying the 5½ cent proportional rate to export traffic—I mean, let's face things factually here. If you want to ask me a direct question and make it specific, I will be glad to answer.

Q. Please read the question I asked the witness and see if you find it sufficiently direct and specific to answer.

[fol. 76] (Question read)

Exam. Dahan: If you don't understand the question, let him rephrase it so you understand it.

The Witness: I don't understand the question, Mr. Hayes.



By Mr. Hayes:

Q. You told me that you thought that the comparison with export rates was a fair standard by which to judge this rate, and I believe you referred to export rates in your direct testimony.

Now, sir, if you—by you I mean the New York Central Railroad—since you are its traffic solicitor—should put all of your domestic rates down to the level of your export rates, it would greatly lower the level of your domestic rates over your New York Central lines, wouldn't it?

A. There is no question about it, but don't have any fear of anything like that happening.

Q. I am not worried about its happening anywhere except on this line and I am wondering why you conceive that export rates are a proper measure of domestic rates, Mr. Witness.

Mr. Murphy: Counsel, would you distinguish at least between maximum reasonableness and minimum reasonableness? You do, don't you?

[fol. 77] The Witness: I think it is proper to make comparisons to show the level of grain rates and the percentage they reflect to 28300. I can't see anything objectionable to it. I think it is a good standard of test.

By Mr. Hayes:

Q. Then why don't you put your other rates down to your export rate level?

Is that sufficiently direct and specific to answer, sir?

A. It is, yes.

Q. Answer it, please.

A. There is no need for it.

Q. Do you think you would have revenues enough to operate your railroad on if you did that?

A. I don't know. We are looking for more money all the time to keep the railroad solvent and this was one reason why we established a 5½ cent rate.

Q. I think you mentioned that the same situation applied at Kankakee as applied at Danville and other break points at various places in your testimony. Just in what respect is it the same?

A. For the same reason that the 5½ cent proportional rate applies to Kankakee and the Kankakee reshipping rate applies to the east with transit at Indianapolis, at Toledo, at Fostoria, any point you want. You still go back to the [fol. 78] reshipping rate to Kankakee in the same fashion as you go back to the reshipping rate to Chicago on corn transited intermediate to Chicago.

Q. Now, let's see. Danville and Paris are in Illinois, aren't they?

A. Yes, sir.

Q. Do you mean when you say that the situation at Danville and Paris and those other junctions is the same, that this 5½ cent rate off of these Kankakee Belt origin stations would apply if the grain moved to Kankakee and then to Paris or Danville and thence east on an eastbound proportion, is that what you mean?

A. Yes, sir. That is, if the 54 cent rate from Kankakee, the reshipping rate, applies today through Kankakee, and Danville, it will apply in conjunction with the 5½ cent proportional rate.

Q. Just for quick reference, would you tell us for the record where Paris, Illinois, is?

A. Well, it is on the Indiana-Illinois border. I just don't have the—I cut off my map here but it is downstate.

Q. How far, do you know?

A. It is south of Danville. I don't have the mileage here, but it is sufficient that the Chicago and Kankakee reshipping rates apply through Paris and to the east.

[fol. 79] Q. How many cars have moved out of these Kankakee Belt stations subject to application of this 5½ cent rate via Paris and Danville?

A. I don't have those figures with me, but I can give them to you later in the day.

Mr. Hayes: I would like to have those.

By Mr. Hayes:

Q. I think there was a reference in your direct testimony, and you correct me if I am wrong, I don't mean to misquote you, or if I do misquote you, correct me—I think there was

a reference to some kind of a rate to Port Cargill, is that right?

A. That is right.

Q. And you figured the return on that rate based on 100,000 pounds per car, if I recall?

A. That is right.

Q. What is the minimum weight for application of this 5½ cent rate according to the published tariff?

A. 100,000 pounds.

Q. Not 110,000 pounds?

A. No.

Q. Do you know what the average loadings were on that movement to Port Cargill?

A. No, I don't know except that they would probably be substantially the same because the minimum weight is the marked capacity of the car.

[fol. 80] Q. And the same goes for your movements on the Kankakee Belt?

A. Yes.

Q. 100,000 pounds?

A. Except I have actual proof that we are running 110,000 pounds and better.

Q. Do you have any documentation of that statement that you can supply?

A. You will see some of them later in the day, Mr. Hayes, some other witness will put them in.

Q. I should like to have that documentation.

What is the mileage from Kankakee to Chicago on the line you used?

A. 74 and nine-tenths miles,—let's call it 75.

Q. And the proportional rate east from Chicago which engages this 5½ cent rate is how much to New York?

A. You mean New York or Kankakee now?

Mr. Hayes: Read the question.

(Question read.)

Mr. Murphy: That is shown in one of our exhibits.

The Witness: It is just—as soon as I find the exhibit right here, I will tell you.

To New York is shown in several exhibits, but take Exhibit No. 15, the distance from stations west of Kankakee,



Illinois to New York is 1,002.7 miles. This is based on 38.3 [fol. 81] miles to Kankakee.

Mr. Hayes: Mr. Examiner, the witness obviously didn't understand what I asked him. Please listen to the question.

(Question read.)

Mr. Murphy: Will you refer to your Exhibit No. 16, Mr. Tascik?

The Witness: Exhibit No. 16, the distance from Chicago to New York short line, 890 miles.

By Mr. Hayes:

Q. Now,—

Mr. Murphy: I believe Mr. Hayes wants the Chicago reshipping rate to New York, Mr. Tascik.

The Witness: The Chicago reshipping rate to New York, 54 cents.

I thought we were talking about mileages.

By Mr. Hayes:

Q. Let's see if we can't get together, Mr. Tascik.

You told me the distance from Kankakee to Chicago via the line used by the New York Central over which this rate applies was 74 and nine-tenths miles?

A. That is right.

Q. Then I asked you, after you got this grain say from Moronts to Kankakee for 38 and three-tenths miles and then 74 and nine-tenths miles further to Chicago, all for 5½ cents, what is the rate that is engaged at Chicago for [fol. 82] transportation east to New York?

Mr. Murphy: I object to the question because it is a statement contrary to the facts in the record, a statement that he transports from west of Kankakee to Chicago all for 5½ cents.

By Mr. Hayes:

Q. When you transport grain to Kankakee, you get 5½ cents for it?

A. That is correct.

Q. We are speaking of corn for remilling in transit at these rates?

A. That is right.

Q. Then when you go on from Kankakee without going through Chicago directly by the line of the New York Central Railroad, that doesn't go through Chicago, and what is the rate that is engaged at Kankakee for such direct shipment to New York?

A. 54 cents.

Q. And that would be true if that grain originated at Moronts, wouldn't it?

A. That is correct.

Q. Now let's take that grain and start it at Moronts, it pays  $5\frac{1}{2}$  cents, doesn't it?

A. To Kankakee.

Q. Yes, I know, and then it pays exactly 54 cents when it goes this additional 74 and nine-tenths miles up through [fol. 83] Chicago.

A. May I clear you up?

Q. To engage the Chicago proportional rate of 54 cents outbound.

A. May I clear this up for you, Mr. Hayes?

Q. I would like to have you answer my question if you don't mind.

A. On your movement of a carload of corn from Moronts to Kankakee via Chicago and east thereof to New York, the rate would be  $5\frac{1}{2}$  cents to Kankakee. On the movement from Kankakee via Chicago to New York you would use the Kankakee reshipping rate of 54 cents which is the same as the rate from Chicago and the New York Central would earn a portion of that rate for its move to Chicago and not out of the  $5\frac{1}{2}$  cent rate.

Q. Well, the revenue derived by the New York Central then, if I understand you—

Off the record.

(Discussion off the record.)

[fol. 84] Q. Well, the revenue derived by the New York Central then, if I understand you, so far as published tariffs are concerned, on a movement of corn from Moronts to

Kankakee and thence directly to New York without going through Chicago is  $5\frac{1}{2}$  cents plus 54 cents, is that right?

A. That is right.

Q. And it is on that basis that you computed a 38.3 miles average, referring to the Moronts to Kankakee mileage?

A. That is right. That is the average weighted movements distance of our movements.

Q. These rates also apply, the  $5\frac{1}{2}$  cent rate, doesn't it?

A. The  $5\frac{1}{2}$  cent rate—

Q. Just state that it does or doesn't.

A. The rate applies in combination with the re-shipping rate from Kankakee.

Q. Yes, and the reshipping rate from Kankakee is 54 cents, is it?

A. That is right, and that is what I have been saying.

Q. And when you go via Chicago, you have this extra 74.9 miles, is that right?

A. When I come in the reverse direction, yes.

Q. That is right.

A. Yes, I have the same thing in both directions.

[fol. 85] Q. Then your revenue, speaking about revenue per car miles, your revenue when your traffic moves via Chicago is  $5\frac{1}{2}$  cents plus 54 cents, just as it was when it moved that much shorter distance to Kankakee and then directly east, that is true, isn't it?

A. Yes. Today, yes.

Q. So the added revenue so far as published tariffs is concerned to the New York Central that it gets for all the service that it performs west of Chicago or Kankakee comes down to a  $5\frac{1}{2}$  cents figure which is then added to a 54 cent figure whether it goes east via Kankakee or Chicago?

A. That is right.

Q. Yes, that is exactly right.

A. Except that I want it understood out of the re-shipping rate from Kankakee via Chicago, the New York Central earns a portion of that revenue if the car moves out via competing line, so we get some revenue for that car.

Q. How much?

A. 13 cents.

Q. Is that per hundredweight?

A. Yes.



Q. That is your division out of the eastbound proportional?

A. Yes.

[fol. 86] Q. When it goes via Chicago?

A. Yes.

Q. So that division is paid the New York Central, then, by the railroad other than the New York Central that moves grain east from Chicago, is that correct?

A. That is right, yes.

Q. How do you—strike that.

That is all.

Mr. Hayes: I have a number of questions.

Exam. Dahan: Did you say a number of questions?

Mr. Hayes: Yes.

Exam. Dahan: We will recess at this time for lunch until 2:00 o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 2:00 o'clock p.m. of the same day.)

[fol. 87]

AFTERNOON SESSION

2:00 p.m.

Exam. Dahan: You may proceed.

I would like to ask the protestants to confine their cross examination to the direct evidence as presented. In the event that they want to digress at all, I would like to have them ask my permission and give their reasons therefor.

The applicant here has a burden of proving his case, and I don't think he is looking for any help from protestants at all, and just confine the cross examination to the direct evidence.

I think we will get along a lot faster and everyone will be happier.

Mr. Hayes: If anything I ask seems not to be germane to the direct examination, please call my attention to it. I am directing it to that.

Exam. Dahan: I just want this examination to go along. I wasn't referring to any questions that have been put before this to this witness beforehand. The examination has been long and there are others that are waiting to cross examine.

Another thing I want to say is that I don't want any repetition by different protestants, so that maybe you will want to get together before you proceed to see who is going to ask what.

[fol. 88] We would like to have the procedure of this hearing go right along as smoothly and as fast as possible.

By Mr. Hayes:

Q. You stated, I think, Mr. Tascik, on your direct examination that the rate from Chicago to New York is also the rate from Kankakee to New York, referring to the proportional rate on such commodities as are here involved which was 54 cents?

A. Yes, that is correct.

Q. That is the rate on corn products?

A. Corn products.

Q. What is the rate on—of course the rate on bulk corn would be somewhat less?

A. 53 and a half.

Q. When the eastbound carrier other than the New York Central takes corn that has moved into Chicago on this 5½ cent rate, you stated before the adjournment that that eastbound carrier gives back to the New York Central 13 cents?

Mr. Murphy: I object to that, your Honor. I don't think that is material on the question of whether or not the rate is reasonable or not.

Exam Dahan: Objection sustained.

Mr. Hayes: I would be glad to argue that, Mr. Examiner. I think it is very material to this rate.

Exam Dahan: The objection has been sustained.

[fol. 89] Mr. Hayes: I would like to be heard on it.

Exam. Dahan: If you want to make a statement on the record, you may do so.

Mr. Hayes: Yes, sir.

The rate as proposed is proposed as a rate applicable via Chicago. It now appears that the eastbound carrier gets 54 cents for that service when it is another carrier than the New York Central, out of which, when it receives the corn from the New York Central, it makes a return of 13 cents

to the New York Central, and it thereby realizes as a charge made for its services for transporting that grain east from Chicago the sum of 43 cents—I beg your pardon, the sum of 41 cents.

Obviously there is no such 13 cent division with the barge lines. The result is that the eastern carrier for the same service is exacting 41 cents for the transportation of this ex-rail grain whereas it exacts 54 cents for the transportation of ex-barge freight, which, as I will submit and do submit, makes the application of that rate via Chicago on that basis of charge an illegal rate since it discriminates against the traffic of the connecting water carrier by taking 54 cents for moving the traffic from the connecting water carrier, whereas only 41 cents is the ultimate charge for moving the traffic of this connecting rail carrier.

[fol. 90] Exam. Dahan: Well, I don't so understand that, Mr. Hayes, and the objection has been sustained. Your argument will stand in the record.

Continue with your examination.

Mr. Hayes: I thought that if that were the fact, it would be material to bring it out. I thought it had been made fairly plain on the record.

Exam. Dahan: As I understand, the reshipping rate of 54 cents applies from Kankakee to Chicago and from Kankakee direct to the east.

Mr. Hayes: I didn't hear that.

Exam. Dahan: As I understand it, the 54 cent reshipping rate applies from Kankakee through Chicago to the east and from Kankakee direct to the east, is that not right?

Mr. Hayes: That is correct, yes, sir.

Exam. Dahan: What you are trying to say now is that when it operates through Chicago, that you are going to take part of the division off of that rate, and the proper rate for the other carrier from Chicago through is the rate from Chicago to the east and discriminates against the barge lines.

Mr. Hayes: The actual charge realized by the eastern carrier.

Exam. Dahan: I don't agree with you, but I sustained the objection and it is not pertinent to the issues in this particular proceeding.

So you go along and examine the witness if you have another line.

Mr. Hayes: Yes. For the sake of the record, my objection to the Examiner's ruling may stand?

Exam. Dahan: Very well.

By Mr. Hayes:

Q. You calculated, I believe, sir, that you made about 85 dollars additional revenue out of this proposed rate, am I correct in that?

A. That is right.

Q. What made up that \$85.00?

A. The 5½ cent proportional rate to Chicago which was in and above the re-shipping rate.

Mr. Murphy: To Kankakee, you mean.

The Witness: To Kankakee, was in and above the re-shipping rate. The fact that the traffic did not move to Chicago, there was a 2 cent absorption charge saved, so the net effect was a 7½ cent saving or net to the New York Central.

By Mr. Hayes:

Q. When the corn takes this routing that you suggested it took to General Foods, up to Chicago and back to Kankakee—

Mr. Murphy: You are speaking of the barge-rail route, Mr. Hayes?

By Mr. Hayes:

Q. I am speaking of corn that moves via the New York [fol. 92] Central from Chicago to Kankakee, how it gets there, and however it gets there.

How much of that corn either as corn or corn products moves south out of Kankakee on the lines of the Illinois Central?

A. None that I know of.

Q. Well, does any of it?

A. No, because the Illinois Central is not an eastern line.



Q. Doesn't General Foods ship into the south, sir?

A. The rate application has only effect to Official Territory.

Q. Yes, I know, but this grain that comes down as you showed on your exhibit was grain you said for General Foods. Insofar as General Foods ships into the south on points that would be reached by the Illinois Central, that grain would go out by Illinois Central, would it not, sir?

A. Well—

Mr. Murphy: I object to this question. I don't know that the south is involved in this case, your Honor. We are dealing with destinations to the east.

Exam. Dahan: What is the purpose of the question?

Mr. Hayes: The purpose of the question is to show that there is a considerable volume of this grain that he refers [fol. 93] to that they lose control of at Kankakee on this movement. If it went to Chicago, they would get their share of it.

Mr. Murphy: I don't know why counsel can't show that with his own witnesses if that be material.

Mr. Hayes: This is the witness that knows, I suppose.

Exam. Dahan: What movement are you talking about? I just don't understand you, Mr. Hayes.

Mr. Hayes: The witness is talking about a big saving to be made or additional revenue. Actually I think he loses revenue so far as—

The Witness: Mr. Hayes,—let me answer the Examiner's question, please.

Mr. Hayes: Let me answer the Examiner's question, please.

Actually I think he loses revenue insofar as that corn takes a movement southbound out of Kankakee. He doesn't get additional revenue by that movement,—I mean, through this rate.

Exam. Dahan: In other words, you are talking about southern traffic to the south and here I believe the witness is talking about traffic to Official Territory. Are those two one and the same thing?

The Witness: May I clear this point up?

Mr. Hayes: No, your Honor, the destination—

[fol. 94] The Witness: Now—

Exam. Dahan: Yes, you may.

The Witness: Tariff 7018 that carries this 5½ cent proportional rate has only application to Official Territory.

Exam. Dahan: So it would have no application to what traffic Mr. Hayes is trying to bring out.

The Witness: No, no, it is very specific.

By Mr. Hayes:

Q. In other words, this rate doesn't apply when the traffic goes Illinois Central to the south?

A. That is right.

Q. But a good deal of the grain that was shown in this exhibit that you showed to General Foods would be grain that went out to the south and therefore your exhibit to that extent would not be relevant to the rates here in question?

A. I don't agree with you on that because the preponderance of this business would move east, and if it moved south, the rate would not apply.

So I wouldn't see any point of using it.

Q. And some does move south?

A. If it does, they don't have the benefit of the reshipping rate on it.

Q. Exactly.

How much of the movement out of Kankakee either as [fol. 95] corn or corn products, what percentage goes out Illinois Central?

Mr. Murphy: Your Honor, we will have witnesses from General Foods Company which is the large miller at Kankakee who will be available to answer questions of that nature. At least they would be more properly directed to those witnesses than to this witness in the interest of shortening it.

Exam. Dahan: Does that satisfy you?

Mr. Hayes: Beg pardon?

Exam. Dahan: To have the answer to your question come from the shipper at Kankakee.

Mr. Hayes: Well, subject to the witness' answer to this question, if I may ask it.

Exam, Dahan: I mean what would be the purpose of trying to get it from him if he couldn't give you the exact answer because he can only talk for his own line, whereas the shipper could be able to speak as to all of the traffic that moved out of the point? So why can't you hold your question until the shipper is on the stand?

Mr. Hayes: I said subject to the witness' answer to the question I am about to ask.

By Mr. Hayes:

Q. Is all of the corn that you ship to Kankakee from Chicago shipped to General Foods?

A. No. Some of it may go to Indianapolis, Danville, and [fol. 96] so on, but all the cars shown in my exhibit are shown to Kankakee.

Q. Then I would have to ask this witness what percentage of the corn that moves out of Kankakee as whole grain or products goes via the New York Central.

A. I couldn't tell you what percentage except that General Foods is an industry on the New York Central and there are only two railroads in Kankakee, the New York Central or Illinois Central, so it would have to move out by the New York Central or the Illinois Central.

Mr. Hayes: I think you answered when you said you did not know the percentage.

By Mr. Hayes:

Q. Referring to your Exhibit 1, let us take as an example Streator. Did you, in preparing your exhibit No. 1, obliterate the lines of railroad running through points on your Kankakee Belt that also go to Chicago?

A. Yes, that is right. It was merely to make a cleaner exhibit out of it so that the New York Central stations could be portrayed more clearly with the river elevators.

Q. Follow me and I will try to cover this one quickly, sir, with one question, because it is material to me.

Is it true that lines of rail run to Chicago from the following points: From Streator, the C.B. & Q. and the Santa Fe?

[fol. 97] A. That is right.

Q. From Dwight the G. M. & O.?

A. Yes.

Q. From Reddick the Wabash?

A. That is right.

Q. From Lostant the Illinois Central?

A. Yes.

Q. While this 5½ cent rate of yours was in effect under temporary authority, how much corn or corn products did any of those railroads move to Chicago from those respective origins?

A. I don't know but I don't think they were moving any of it before and they are not moving too much now. So I don't know, that is something for those railroads to answer.

Mr. Murphy: He said he didn't know. I object to the question.

Mr. Hayes: I heard what he said.

By Mr. Hayes:

Q. Would you go so far as to say, as a man who was interested in developing traffic for your railroad, that while this 5½ cent rate was in effect, your understanding and impression was that those railroads moved practically no corn from those points to Chicago?

Mr. Murphy: I object to the question. He has already stated that he didn't know.

[fol. 98] Exam. Dahan: I think that is an answer to the question.

The Witness: Yes, I can tell you this, that the Illinois lines for many years, all of them, including the New York Central, have been trying to solve some scheme of rate making that would make us competitive with the barges. We have all been losing business and handling very little.

If you would like to have me tell you a little history on this—I will be glad to go into it.

Mr. Hayes: Mr. Examiner, may I have that stricken and have the witness answer the question I asked him?

Exam. Dahan: It may be stricken.

Mr. Hayes: Read it.



Exam. Dahan: I think he has answered your question, though, previously that he did not know, and I don't see how he can keep answering the same question if he doesn't know.

If he doesn't know, he doesn't know.

Mr. Hayes: He didn't know exactly, Mr. Examiner.

Exam. Dahan: If you want to subpoena the other railroads on the stand and have them testify as to whether or not they have been handling any traffic, you may do so, but as far as this witness is concerned, he says he doesn't know and we don't want to press the question.

Mr. Hayes: Very well.

[fol. 99] By Mr. Hayes:

Q. What percentage of your corn movement from Chicago to Kankakee was to General Foods?

A. I don't know. We haven't made any figures on it.

Q. Would it be the greater part?

A. Yes.

Mr. Hayes: I dislike to press this if the Examiner thinks it is not material, but I should like to know the witness' understanding as to what percentage it was.

The Witness: I don't know what the percentage is, but General Foods is a big transit operator at Kankakee with a corn mill at Kankakee.

By Mr. Hayes:

Q. I understand, and you don't know what the percentage is?

A. The corn that they draw from Chicago moving to Kankakee which I have shown on Exhibit M for a typical period is representative of the business moving to General Foods from Chicago.

Q. Now do you have any knowledge of what percentage approximately of your movement from Chicago to Kankakee would be your shipments to General Foods?

A. Percentagewise I can't give you a figure, although I would say it was close to 100 per cent.

Q. Thank you, sir.

Has it occurred during the period that this 5½ cent rate was in effect under temporary authority that you had orders [fol. 100] for empty grain cars in Chicago that you could not fill when the cars were asked for?

A. I think during this period all railroads had their difficulties with filling grain car orders.

I think that we did a very good job in filling our orders in the Chicago district contrasted to the other railroads.

I think when the grain starts moving in heavy volume, you just don't get the cars all in one spot and say "Well, here we have them all," but I think that overall we did a mighty fine job in keeping our people adequately supplied with cars during the year 1957 in the Chicago area.

Q. My dear sir, I am not criticising you, I simply asked you if there have been times when you were asked for empty grain cars in Chicago while this 5½ cent rate was in effect when you were unable to supply them because you didn't have cars?

A. There were and there were also times prior to the establishment of this rate when we had even more serious car shortages at Chicago.

Q. Would you say, then, that that was a rather chronic condition at Chicago for your line and others?

A. No, it is not a chronic condition. We supplied the cars to the best of our ability. When you get an order for 150 cars in one day, you just have to go ahead and assemble [fol. 101] those cars, and it may take two or three days to get them and maybe a week, all depending on the circumstances and the demand from all other elevators for cars.

Q. In other words, there is a pressure for empty box cars at Chicago, and you do the best you can with it, and in the periods I mentioned, and also theretofore, you have had difficulty in keeping up with the demand and other railroads have, too, for empty box cars at Chicago, is that true?

A. In 1957 the car shortages were not as acute as in previous years, so I wouldn't go along with the statement that we have had difficulty in furnishing cars.

There were periods maybe for two or three days where the supply of cars could not be furnished instantly, but

generally speaking in 1957, because of the way business has dropped and been dropping, and everything else, we have had the cars. The only trouble is we didn't have the loadings for them.

Q. Well, I understand that with the recession in business, the shortage was not so acute, but you realize, and frankly there was a car shortage pretty much coming along regularly of empty box cars in Chicago for you and other railroads.

A. What period are you talking about now?

[fol. 102] Q. I was talking about 1957 and for prior years.

A. Well, as to '57, my answer is the shortages were not acute in 1957 compared to '54 and—'56 and '55.

Q. But there were shortages?

A. I have answered this to the best of my ability, I think.

Exam. Dahan: That is enough. You don't have to go on. You have put in your answer. If he has other testimony or other facts that say something else, he can present them through his own direct testimony. Just answer the questions.

By Mr. Hayes:

Q. Does the New York Central sometimes transfer cars to which this rate has applied to other lines east of Chicago.

A. Oh, yes. Oh, east of Chicago?

Q. Yes.

A. You are talking about the combination of the proportional rate to Kankakee with the re-shipping rate from Kankakee via Chicago and east, is that what you are talking about?

Q. Let us take a shipment that starts on this Kankakee Belt and moves sometimes via Kankakee and sometimes via Chicago. That is correct, isn't it?

A. That is right.

Q. There would be a 54 cent proportional assessed by the [fol. 103] eastern carrier if it were different from the New York Central, if it went out of Chicago and went by a different carrier.

Now after—

Mr. Murphy: I object to that question, your Honor. It was clearly stated this morning that the 54 cent proportional rate on grain moving from the Kankakee Belt applies from Kankakee and not from Chicago.

Mr. Hayes: I think the witness understands my question.

By Mr. Hayes:

Q. Does the New York Central, having moved that car from Kankakee either directly east or from Kankakee to Chicago, ever transfer that car at some point intermediate to Chicago and New York to another line?

A. Yes, they are joint rates. They apply with the Lehigh Valley or D.L. & W. or whatever the routing might be in the tariffs.

Q. Say you move a car off this belt and this 5½ cent proportional applies and the car goes out of the hands of the New York Central at Indianapolis to another line for shipment on east either because of transit there or without transit there, however it may happen—does the New York Central under those circumstances get a division—

Mr. Murphy: Objection, your Honor.

Mr. Hayes: I haven't finished my question.

[fol. 104] By Mr. Hayes:

Q. —get a division of this 54 cents?

Mr. Murphy: Are you finished?

Mr. Hayes: Yes.

Mr. Murphy: I object to the question.

Exam. Dahan: Objection sustained.

We are not going to go into divisions in this case, so please don't frame any further questions as to divisions. That is a matter between the carriers; it is not a divisions case. This is not a matter for any of the protestants; it is between the carriers that are party to the rate. We don't have to go along and get into that subject at all.

Mr. Hayes: I understand the Examiner's ruling and I will abide by it, but I must make my own position clear on



the record by offering the evidence, however, and the only way I can do it is to ask the witness the question. I have asked the question. Do I understand the objection is sustained to the question?

Exam. Dahan: That is right.

Mr. Hayes: I would offer to show, then, that—

Exam. Dahan: You can show anything you want. If you want to argue that I possibly should let this evidence in, you can do so on brief, but I don't want any evidence in concerning divisions.

Mr. Hayes: I am not going to argue.

[fol. 105] Exam. Dahan: That is period.

Mr. Hayes: I am only going to make an offer of what the testimony would be if the witness were allowed to answer it.

Mr. Murphy: I never heard of making an offer of proof on someone else's witness, your Honor.

Mr. Hayes: Then you haven't been in the same places I have been.

Exam. Dahan: You make your offer of proof through your own witnesses, if you want to.

Mr. Hayes: My witness wouldn't know about this division business, your Honor; this witness does.

I offer to show what the witness would testify to if he were allowed to answer the pending question.

Exam. Dahan: You want to make him your witness now?

Mr. Hayes: For the purposes of that question which I have asked, I should like to make my offer of proof as to what he would say.

Mr. Murphy: I don't think you can split a witness' personality, Mr. Hayes.

Mr. Hayes: I have heard no objection to the offer of proof.

Mr. Murphy: I object.

I object to the offer of proof, your Honor.

[fol. 106] Exam. Dahan: You object, Mr. Murphy, to any offer of proof through your witness?

Mr. Murphy: I object to any offer of proof through my witness.

Exam. Dahan: The objection is sustained.

Let us have a five minute recess.

(Brief recess.)

Exam. Dahan: On the record.

You may proceed, Mr. Hayes.

Mr. Hayes: Mr. Examiner, I think perhaps you may be getting a little tired of the sound of one voice. I am going to let someone else ask the witness some questions.

Mr. Murphy: Off the record.

(Discussion off the record.)

Exam. Dahan: On the record.

You may proceed.

[fol. 107] Cross examination.

By Mr. Freeman:

Q. I have just a few questions, Mr. Tascik, in connection with your showing of movements. You did not show your movements for November of this year. Can you give us now or supply for the record the movements from the Kankakee Belt for the month of November, and if you have the movements for the month of December?

A. I don't have them with me.

Q. Could you supply them for the record?

Maybe I should address myself to counsel.

Mr. Murphy: I don't know whether he could get them or how long it would take him to get those figures together.

Would you have to make a study to get those?

The Witness: They would be readily available. I don't think we would have too much trouble.

Mr. Freeman: You may give them in the same terms you have given in carload quantities.

By Mr. Freeman:

Q. Just so there is no misunderstanding, I would like you to do it on the same basis you have shown both corn and grain, and I think it would be most relevant if you would

show merely your corn movements, but we want to be sure we are on a comparable basis here.

Mr. Murphy: To which exhibits are you addressing yourself?

[fol. 108] Mr. Freeman: In his Exhibit 13.

By Mr. Freeman:

Q. So we may be clear, is that corn or all grain?

A. That is corn.

Q. That is corn, and Exhibit 4 indicates it is also corn, is that correct?

A. That is right.

Q. And it is Exhibit 5 which is all grain?

A. All grain including corn.

Q. I think it would be most helpful to the record if you would give us all corn for the month of November if you can and for the month of December.

Now if you will turn to your Exhibit 3, please, am I to understand from this exhibit and your testimony that the competition you felt—

A. Wait a minute. I have the exhibit.

Q. Do I understand that the purpose of the exhibit together with your testimony is to show that your competition with the Illinois River began approximately in 1940?

A. That is approximately right. That is when we started feeling it.

Q. Now you have supplied us in the exhibit we have just mentioned, Exhibits 4 and 5, the rail movements from 1950 to 1956. Can you supply for the record figures which are comparable to those shown on Exhibit 3 from 1940 down to [fol. 109] 1956 so that we can have a comparable showing of the rail?

A. No, I cannot, and I can give you this explanation for it: Since 1940 many of these agencies along the west end stations have been closed, and whatever happened to those records, nobody seems to know. For that reason, if I had that information, I would have been glad to prepare an exhibit to show that at one time our west end stations were big factors in this grain movement. For the simple reason

that I just don't have the information, I just didn't put it in the exhibits.

Q. All right, Mr. Tascik.

You said that you thought that the New York Central was a big factor in this grain movement.

Now on what do you base that statement? You don't have the records and haven't been able to look at them, is that right?

A. From my common knowledge of the total grain movement on the Kankakee Belt during those years, I do have statistics showing the complete movement for the years 1940, and so on.

Q. Now what are those figures?

A. I don't have them here, but I mean there are such figures.

Q. What kind of figures do you have?

A. A total figure for the Kankakee Belt, the entire line [fol. 110] from one end to the other.

Q. For corn?

A. No, it is all grain combined, and of course it doesn't cover the West End Stations, it covers the entire railroad, the length of it.

Q. The East End and the West End?

A. Yes, a 200-mile haul, so I don't think those figures, that you would get much benefit out of them.

Q. But you make some assumptions based on them, I take it?

A. Oh, yes, we were factors in the grain movement in the old days.

Q. Based on the figures that you have for the whole Kankakee Belt east and west?

If that is the basis for your assumption, I would like to have those figures then so I may look at them to test your conclusion.

Mr. Freeman: Again I will address myself to counsel. May I have those figures?

Mr. Murphy: I have never seen them. If they are available I assume we will be willing to furnish them.



**Mr. Freeman:** From 1940 forward so they will be on a comparable basis. I think you should carry those figures from 1940 all the way to 1957, and then we would have something that would be a comparable basis.

[fol. 111] **The Witness:** The figures wouldn't give you much comfort or, rather, couldn't give any of us comfort because our East End handling is holding up pretty well because we don't have the water competition. When you take the entire length of the railroad, 200 miles, and you go ahead and say—if I could subtract or just give you the portion of the business for these particular stations, then I could go ahead and give you a true picture, but the way it is, I don't think it will do you much good.

**By Mr. Freeman:**

**Q.** The East End is not affected by barge movements and was not affected by barge movements, is that your position?

**A.** Yes.

**Mr. Freeman:** I would like to have the figures. It seems to me they are facts relevant to this record.

**Mr. Murphy:** We will see if we can gather the figures together and supply them if we can put them in any sort of an intelligent state for you, Mr. Freeman.

**Exam. Dahan:** Before the close of the hearing?

**Mr. Murphy:** Yes, we will attempt to do that if we can.

**Exam. Dahan:** All of the matters requested of this witness will be presented, I presume, before the close of the hearing. I have not authorized the late filing of any exhibits. [fol. 112] You may continue, Mr. Freeman.

**By Mr. Freeman:**

**Q.** Mr. Tascik, does the rate here in issue apply via Chicago on the IC and west of Chicago to points in Central Territory or points east of Chicago in Central Territory?

**A.** I am not familiar with the routing of all of the carriers, except that I do know that generally speaking the New York Central rates do not apply via Chicago. NCTR Tariff 535-C to Central Territory destinations with the

New York Central Railroad as the origin line from these Illinois stations—

Q. But you are not familiar with whether it would apply via the Illinois Central from Kankakee to Chicago?

A. I wouldn't be able to tell you without the tariff. It is 535-C but you could probably establish that through your own witness.

Q. I would be delighted to.

Turning to your Exhibit 13, you show in terms of number of cars that Union Hill is your largest origin station, 388 cars.

Is there an elevator or elevators located at Union Hill?

A. To my knowledge I believe there is one there. I have a statement here somewhere.

No, I don't have the file with me, but as to whether there is an elevator there or not—

[fol. 113] Mr. Schier: Union Hill Elevator.

The Witness: Union Hill Elevator.

By Mr. Freeman:

Q. You have one shipper from Union Hill or do you have more than one shipper?

A. I don't know. All I know is that this was shipped from Union Hill. Whether it was one shipper or under one name or one consignor, I can't say.

Q. You show Streator, Illinois, as a point, only 26 cars. Is there an elevator at Streator?

A. Yes.

Q. What is the elevator at Streator?

A. I don't remember the names on all of them, on all of the elevators. There will be a witness later on that can probably tell you the names of all of these elevators that is actually in the territory.

Mr. Freeman: Will that be a New York Central witness, Mr. Murphy?

Mr. Murphy: No, not a New York Central employee but a witness for applicants.

By Mr. Freeman:

Q. You mentioned your local freight agents along the Kankakee Belt. How many freight agents have you on the Belt, and if you will, please tell us where they are located?

A. The open and free pay station list will show the following:

[fol. 114] These are the closed stations, Van's Siding, Lehigh—

Q. Just a minute, please.

A. Van's Siding, Lehigh, Reddick, Blair, Smithsburg, Sunbury, Budd, Missal, Priscilla, and Moronts.

Q. Do you have an agent actually located at those stations?

A. No, sir, we don't have an agent at those stations.

Now I will give you the stations at which we do have an agent.

Q. Thank you.

A. Union Hill, Dwight, Streator, Lostant, McNabb, and Granville.

Q. These stations are open seven days a week or five days a week?

A. I can't tell you. I know they go ahead and take care of the station business for their own stations and other stations. Whether they operate on five days or seven days I am not in position to tell you. I presume about five days, but a lot of them also have other duties incidental to the agent's work such as taking care of towers, or something, so of course it would be in that case a seven-day job.

Q. One employee at each one of those stations or more than one employee, one agent?

A. I don't know of any agents outside of Streator that [fol. 115] would have more than one employee.

Q. He is on a five-day week, eight hours a day?

A. That is right.

Q. At Streator you say the situation is different. How many are they? Are they around the clock at Streator?

A. Not from the standpoint of being local, supervising the agency work, that is, the billing, that would be strictly an eight hour a day job.

Q. How is transit policed at Kankakee? Is there an office at Kankakee that polices transit?

A. The transit at Kankakee is policed by the Eastern Weighing and Inspection Bureau.

Q. Which has an office at Kankakee?

A. I don't think they have an office there. They have an inspector.

Q. They have an inspector located at Kankakee?

A. Operating out of the Chicago office.

Q. Am I getting outside of your field or province when I talk about the transit policing, Mr. Tascik?

Is this outside of your area?

A. Yes, sir, you are. Transit policing is done by the Inspection Bureau.

Q. I wonder if you could tell us whether in addition to the processing plant at Kankakee, where the other substantial processors are located which is a destination for [fol. 116] this grain?

You don't need to give me the name of the person located there, but just the points.

A. Indianapolis, Danville, Paris—in fact, you could take any transit station in Central Territory.

Q. I am asking you the substantial ones as a result of your experience with this rate.

A. The three I have named—four, rather.

Q. In addition to Kankakee, Indianapolis, Danville and Paris?

A. Yes.

Q. This would account for substantially all of the corn all through the Kankakee Belt?

A. Oh, no, there are other transit operators all through CSA Territory. We don't control who buys the corn and who the ultimate transit operator will be. It could be Fostoria, it could be Toledo, it could be almost any point in the Central Territory. It is wide open for anyone who wants to use it in Central Territory.

Q. I am asking you as a result of your experience under this rate where the processors are located who are using this rate?



A. I have named substantially the movement is to Kankakee, Indianapolis, Danville and Paris.

Q. Does this corn go, as a usual proposition insofar as [fol. 117] the New York Central plays a part in the movement, to Kankakee or one of these other points for processing and then go to final destination, or does it get some transit in between?

A. In order to get the benefit of the five and a half cents proportional rates, it must be subject to a transit and milling application.

Q. And stopping for processing at one of these points would meet that test?

A. That test or any point where it is transit.

Q. I am asking if in addition to that within your experience, Mr. Tascik, it has been your experience that this corn either gets some intermediate elevation before it gets to a processor or whether after it is processed, it gets further transit before it gets to the ultimate destination?

A. Well, of course naturally some of it went into storage before going into transit for transit operation. Whenever you have any transit—grain is subject to storage in transit somewhere along the line.

Q. Is it at one of these points or some other point, for example take the man at Indianapolis, the processor at Indianapolis, is it your experience that the grain goes off the Belt to Indianapolis to the processor and is there stored, or are you suggesting it may be stored some place between [fol. 118] the Kankakee Belt and Indianapolis?

Mr. Bradford: Wait a minute. We are going to have a witness to tell you exactly how it is done.

Mr. Freeman: I am just using this as an example.

The Witness: I don't think you will find any storage of grain between Kankakee and Indianapolis.

By Mr. Freeman:

Q. It wouldn't get an elevation storage?

A. No, sir.

Q. How about from beyond Indianapolis?

I am only using that as an example so we can be clear in our terminology as to what we are talking about here.

Is it your experience under this rate it will go from Indianapolis to ultimate destinations or will it receive a subsequent transit after leaving Indianapolis?

A. Well, I can answer the question in this manner, that all this grain or all this corn moves on a reshipping rate from Kankakee of 54 cents, and I am using New York as an illustration.

Now your question is if the grain goes to Indianapolis, is it transited there or stored?

Mr. Murphy: I don't think that is the question.

The Witness: I am just trying to give this as an illustration.

Mr. Murphy: I don't think that is—

The Witness: I want to use this as an illustration now. [fol. 119] If it is transited and moves on to New York, it is still the 54-cent rate. If you get this grain from Kankakee and you store it in Indianapolis and then it is transited somewhere intermediate, you get the 54-cent rate and then reship it out.

But there is no difference here than with the 54-cent rate applicable today on the reshipping rate.

By Mr. Freeman:

Q. I am not asking you about the tariff application which we both understand each other on. I am asking you about your experience under this rate as to how it is used.

A. My experience on the great majority of this grain is that it moved to Kankakee and was transited at Kankakee; it moved to Indianapolis and it was transited there; it moved to Paris and it was transited there; it moved to Danville and it was transited at Danville.

Q. And from those points it goes to ultimate destination?

A. To ultimate destination.

Mr. Freeman: That is all I wanted to—

Mr. Bradford: Let me ask one question to clear this up.

Mr. Freeman: Wait until I finish and you will have an opportunity on redirect.

Mr. Bradford: I want to clear up the term "transit." [fol. 120] When you say "transit," do you mean milling in transit?

The Witness: Milling in transit.

Mr. Freeman: That is what I meant.

By Mr. Freeman:

Q. You referred to a six-cent rate to Port Cargill in your testimony. Is that a local rate?

A. Yes, sir, it is, and the exhibit so shows it, I believe.

Q. In other words, there can be no subsequent transit, that is, no subsequent movement under that rate on a re-shipping rate? You pay a full local out of there?

A. I don't know.

Q. There is no transit on that rate, let's put it that way?

A. No, but the rate can be added to any rate you have out of there. I don't know what your rate situation is out of Minneapolis. If you have reshipping rates, I don't know of any reshipping rates out of Minneapolis, but I do know this much, the six-cent rate would apply to Port Cargill and it can move out by water.

Q. Let's talk for a minute—maybe we can talk about water, if you like, for a minute, but let's talk about the rate that would be applicable out of Port Cargill to a destination by rail. Is there a pad requirement on that rate?

A. It is a local rate into Port Cargill and the rate would be in addition—or whatever your rate would be from Minneapolis [fol. 121] would be in addition; it would play no part.

Q. It would be a local rate out of Minneapolis?

A. It would have no part. In other words, the transaction would cease once it got to Port Cargill.

Q. Does that rate include 212?

A. No, it does not.

Q. What other rates at this level have you been able to find, Mr. Tascik?

Mr. Murphy: I object to the question. He has prepared a number of rate exhibits here which he has submitted to give the reasonableness of the rate.

By Mr. Freeman:

Q. Is this the rate you are relying on so far as a comparative showing?

A. I am relying on all rates that the rate we established is a compensatory rate in relation to rates existing today.

Q. As shown on your exhibit?

A. That is right.

Mr. Freeman: That is all.

Oh, I do have one further question which is a matter of clarification.

By Mr. Freeman:

Q. If you will look at Exhibit 3 a moment, is it your understanding that the figures shown in Column 2 are movements not only that originated on the Illinois River but movements which may have originated at some other point [fol. 122] and moved via the Illinois River?

A. This is a statement of all barge shipments to Chicago irrespective of origin.

Q. So that this is not a showing limited to the movements originating on the Illinois River?

A. It is movements coming in via the Illinois Waterways.

Q. In other words, it is not limited to the points you show on your Exhibit 1?

A. No.

Mr. Freeman: That is all I have.

Cross examination.

By Mr. Chartrand:

Q. I would like to address my first question to your counsel.

We are here considering a Fourth Section Application No. 33955. Am I correct in understanding that there is the original application and only three amendments?

Mr. Murphy: That is my understanding also.

Mr. Chartrand: No other amendments are involved?

Mr. Murphy: No.



By Mr. Chartrand:

Q. Mr. Tascik, continuing with this Fourth Section Application, does it apply or seek relief on whole corn?

Mr. Murphy: I think that is a question that should be addressed to counsel. It is a legal document. It does so apply to whole corn, the application does.

[fol. 123] Mr. Chartrand: It does apply to whole corn?

Mr. Murphy: Yes.

Mr. Chartrand: Could you show me how that applies to whole corn?

Mr. Murphy: Well, it is an original application and three amendments. It may take some time. Do you want me to read the entire document, Mr. Chartrand?

Mr. Chartrand: The entire document goes, insofar as justification and direct reference, to whole corn and its movement via barge and rail, but insofar as the prayer or the relief sought, it is only confined to products of corn.

Mr. Murphy: I assume that that is something the Commission will have to dispose of Mr. Chartrand. We take the opposite view.

Mr. Chartrand: That it does?

Mr. Murphy: Yes.

By Mr. Chartrand:

Q. Now, Mr. Tascik, in listening to your direct testimony, constant reference is made to the competition that existed prior to the establishment of this five and a half cent rate as being a movement of corn to the river, thence barge to Chicago, and then subsequent rail movements to the East?

A. That is right.

Q. Now the rates, though, that have been published to [fol. 124] meet that competition, do they apply on whole corn?

A. No, sir, they do not.

Q. What do they apply on?

A. On corn for milling in transit.

Q. Corn for milling in transit. In other words, you are leaving undisturbed the long-existing rates on whole corn

and have put in a low combination of rates over Kankakee on products of corn, is that correct?

A. That is correct, and there was a reason for it.

Q. What is your reason?

A. We were concerned with this movement from stations and farms adjacent to our railroad going to the Illinois River, and we were very serious about what could be accomplished in recovering some of this business for the railroad, particularly as our Kankakee Belt line business was practically drying up, and we had very little business originating at these stations. We went to the elevators and the elevators told us that the only way we could get into the picture would be to make ourselves competitive.

Now that wasn't enough because after all we had to go ahead and find out what we were going to do if we were going to make ourselves competitive, who would get this business.

I think it is common knowledge that General Foods have a big corn mill at Kankakee and are big consumers of corn. [fol. 125] We went over to General Foods and said, "Why can't we get some of this corn right here from our own back yard, and here it is moving to Chicago and down to Kankakee and we can't get a pound of that corn through Kankakee."

They says, "When you make yourselves competitive with the barge route, we will give you assurances we will use your railroad. But first of all you have got to go ahead and place yourselves competitive."

We made the same investigation with some other transit operators and it all developed that here we had assurances from transit operators that they would use this rate if we made ourselves competitive.

Now mind you, over a period of years the railroads have been trying to figure out some means and ways of getting this barge competition. Obviously they felt that they couldn't make rates as low as the barge rates, and some railroads did attempt to put in rates, but they were twice as much as the barge rates and they weren't successful.

I gave some very serious consideration as to what the level of that rate should be, and I came to the conclusion

that if I was going to be successfully competitive with the barge lines, I would have to go ahead and establish a rate competitive with the barge rates to Chicago.

The question then arose, well, would that be a compensa-[fol. 126] tory rate. When I figured out with these millers that I had the assurance of this business, that they would use this rate, and the traffic could use directly through Kankakee to the East without involving these absorptions at Chicago, here was a bona fide case where I was picking up five and a half cents additional, or five cents when I established this rate, than I would normally get on the reshipping rate from Chicago.

Now you may ask how I arrived at this five-cent rate in the first instance. The barge rate from Moronts to Chicago is five cents. The Territory that was seriously affected by barge competition were the stations west of Kankakee to and including Moronts. The reason I didn't go beyond Moronts is all I would have is paper rates because there are no elevators beyond Moronts.

So I stopped at Moronts, and the water rate or the river rate from Moronts to Chicago is five cents. I published a five-cent rate, or, rather, filed a proposal for a five-cent rate from Moronts to Chicago and I blanketed it and make the stations intermediate so as to carry the same rate, and that is the history why I first of all established a blanket rate of five cents, and, secondly, why I confined it to corn milling in transit, because that is the grain that I was primarily interested in recovering with the assurances that I had that [fol. 127] if I had that rate, I could get the business for rail movement.

Q. So you only wanted to regain a portion of this traffic, this competitive movement?

A. A portion that meant a lot to the railroads. I tried to get as much business as I could. I am always interested in getting all the business I can.

Q. What is so attractive about the products of corn when you ignore completely whole corn and the predominant movement is whole corn?

A. Mr. Chartrand, I will agree with you right now that the same competitive conditions apply to whole corn as apply to corn milled in transit.

Q. Well, how do you justify the discrimination against whole corn?

A. I explained to you—

Mr. Murphy: I object. He hasn't said this was discrimination against whole corn.

By Mr. Chartrand:

Q. How do you justify the higher rate on whole corn than on products of corn, then?

A. I explained to you that when I started making this analysis and study, I had assurances from people that were going to use it, they were transit operators, they milled in transit, and I was looking to an end to go ahead and get some of this business for the railroad.

Q. Did you come to the Chicago people that merchandise [fol. 128] and deal in whole corn and ask them what they needed to give you a chance to compete for this business?

A. They had the rate so I did not contact them, but if you recall, this proposal was filed in regular fashion subject to publicizing with all the shipping trade and not one to my knowledge opposed the proposal before the rate committees.

Q. Do you remember the commodity classification of that application before those rate committees? What was the commodity involved?

A. Corn, five and a half cents to Kankakee.

Q. Corn?

A. As a proportional rate for milling in transit. It had a qualification in the proposal.

Q. Corn?

Mr. Murphy: He stated that it had a qualification, Mr. Chartrand.

By Mr. Chartrand:

Q. Well, is the New York Central and the Eastern railroads here seeking this Fourth Section authority here and a continuance of a higher level of rates on whole corn as against the products of corn?



A. As the rate situation stands today, that is the issue before the Commission.

If there is a demand or a request on the part of the Chicago people for opening up this rate to whole corn, [fol. 129] I am prepared to file such a proposal in the same manner as we have filed the proposal for the five and a half cents milling in transit rate for consideration of the Rate Committees, and for progress through the same channels.

Q. You make that upon a contingency, namely that a request be made. Has not a request already been made of the New York Central that it apply equally on whole corn?

A. A request has been made from the Board of Trade and I thought that in the interest of letting this case simmer down that it would be well to go ahead and hold that proposal in abeyance until we dispose of this case. However, if it is your wish that a proposal be progressed before the conclusion of this hearing, I will be glad to progress it.

Q. Before the conclusion of this hearing?

A. I mean the conclusion or before the decision in this case. I mean within the next two or three weeks, whatever it takes. It takes me a little time to work up a proposal. I would have to study the angles.

Q. Do I understand you correctly, then, that you would proceed immediately or, let us say, as fast as possible and without delay to take and correct that situation by making the five and a half cent rate applicable also in connection with whole corn?

[fol. 130] A. That is right.

Q. In your testimony, Mr. Tascik, you mentioned that you only went as far west as Moronts. Why did you stop at Moronts?

A. I thought I explained that, Mr. Chartrand. It would only be paper rates. There are no elevators beyond Moronts on the New York Central.

Q. Well, do I understand correctly, then, that all tonnage figures that you show as having originated on that line all came out of elevators?

A. Yes.

Q. None of it was loaded other than through a permanent elevator facility?

A. I don't know whether a man might have a—what do you call these things?

Q. Portable loaders?

A. Portable loaders. I don't know whether there was some portable loading when the elevators get filled up. Irregardless of whether we are talking about the five and a half cent rate or not, I see these portable loaders all over the railroad.

Q. They are in operation on the railroad today?

A. I see them at these various elevators. I see them right next to the elevator there. I see a portable elevator.

[fol. 131] Q. Loading cars?

A. Loading cars, yes, sir.

Q. If a permanent elevator facility is not essential for loading at a particular station, then again why did you stop at Moronts? Is it the mere fact that there were no elevators west thereof? That doesn't prevent loading of cars, does it?

A. I would like to take you on a tour of that territory between Moronts and Zearing, and you will find some of the most beautiful rock and hills and gullies and swamps that you have ever seen in your life. That is the reason for it. There is no corn in there—I mean along the New York Central.

Q. Well, of course, the corn could be grown back a few miles and loaded at these stations, Ladd, for example?

A. Yes, but if you will look at the map, what could we actually have beyond Moronts?

DePue is a railroad point there of interchange from the Rock Island.

Howe has a zinc company at that point and Seatonville, there is nothing there. From Seatonville to Zearing, the New York Central operates over TB&Q trackage rights, so that completes the railroad beyond Moronts.

Q. If I came to the New York Central tomorrow with my portable conveyor and wanted to load a car at Ladd, would [fol. 132] you accept the car?

A. First of all, in order for you to put a portable conveyor on our railroad, you would have to lease the property.

Q. I would have to lease it?

A. Yes. We just don't let anybody come over on our property and put a portable loader there.

Q. Do you have a number of leases on that line there now?

A. I think there is one or two but I am not too definite about it. That is under the jurisdiction of the division freight sales manager in charge of that particular office.

Q. Is he going to testify in this proceeding?

A. No, he is not.

Q. Mr. Tascik, at the time you went to your elevators to try and place yourself in a competitive situation, and I will refer to Dwight and stick to Dwight throughout my question, was the corn moving from the area of Dwight a shipping point on your railroad by truck to the river and then barge to Chicago and then rail to the East? Was that the competitive picture prior to the five-cent rate?

Mr. Murphy: May I hear the last question again, please?

(Question read.)

Mr. Murphy: I wonder if you could state your position on that particular issue. You stated it on another issue, Mr. Chartrand.

[fol. 133] Mr. Chartrand: Yes. My sole question is how was corn moving prior—how was the corn moving from Dwight, from an elevator on your railroad at Dwight, prior to the establishment of the five-cent rate?

The Witness: It is apparent that it was moving to the river, and I refer you to Exhibit 4 showing that the movement from Dwight—that the corn movement from Dwight amounted to 46 cars, and in contrast I want to refer you to Exhibit 13 to show you that we handled 244 cars from Dwight.

I think that that demonstrates that this grain must have been moving to the river because that is when we first got ahold of it.

By Mr. Chartrand:

Q. Well, then, in studying this subject, did those people at Dwight tell you how that corn had been moving?

A. Yes.

Mr. Murphy: If I may interrupt again, my question was you are directing questions against an issue entirely apart from the one you stated you took a position on at the beginning of the hearing, and I wonder if you might indicate what your position is on this issue that you are questioning on now.

Mr. Chartrand: I am just trying to develop the facts. We are talking about a time before the five-cent rate was established.

[fol. 134] Mr. Murphy: What is your position on the level of the rates, Mr. Chartrand?

Mr. Chartrand: On the level of the rates, I am against the level of the rate, and I am also against the fact which has been since cleared up somewhat of the discrimination against whole corn.

By Mr. Chartrand:

Q. Was it not a fact that the corn was being trucked from Dwight to the river and then utilizing barge facilities to Chicago for a subsequent movement by rail to the East?

A. Yes, I think the exhibits show that.

Q. And you sought to put your elevator at Dwight in a competitive situation or in an equal position to meet that competition?

A. Yes, I think we have.

Q. As close as you could?

A. We have a right—we have an inherent right to the transportation.

Q. But there was a primary truck movement from your elevator at Dwight to the river?

A. From that area, yes.

Q. Now that competition resulted in Chicago being the barge unloading point, did it not?

A. Yes, it moved by barge into Chicago.

Q. When you sought to meet this competition, you ignored [fol. 135] the point at which the competition unloaded the grain and put it back on the rails and picked a point like Kankakee over which to construct your rates?

A. I actually see nothing wrong in that, Mr. Chartrand. I have a right to meet my competition, and while you are



talking commercial aspects now, my interest centers entirely on what can I do for the New York Central Railroad, and in this particular case I was getting five and a half cents or five cents at the time this rate was established more than I got out of the rate through Chicago, and particularly when I had to take into consideration absorptions.

So to me with this movement that went to Kankakee and other points, certainly there was nothing selfish about it, all I wanted to do was to improve my financial position.

Q. There isn't any doubt in my mind, Mr. Tascik, but what you had the wholehearted interest of the New York Central at heart when you failed to consider Chicago, you failed to consider whole corn—

Mr. Murphy: I object to this as argument.

Mr. Chartrand: —and constructed it over Kankakee.

Mr. Murphy: There is no question.

May that be stricken, Mr. Examiner?

By Mr. Chartrand:

Q. Mr. Tascik, you referred throughout your testimony [fol. 136] about this McGraham formula, and I believe you indicated it had been in existence for a long time.

Under that formula were the through rates to the East equal to the Chicago combination?

A. From the intermediate points?

Q. From this territory west of Chicago here under that formula?

A. They were related to it, yes.

Q. Related to or were they equal to?

A. Well, I just don't understand you, Mr. Chartrand, on this point that now you are talking about through rates from the West End Stations that we are talking about, and we are talking about, for example, a destination like New York.

Q. Union Hill and West.

A. All right, and what are we talking now about, domestic rates?

Q. Yes.

A. There were no through rates. They were on a combination basis.

Q. Combination basis?

A. Yes.

Q. And later when through rates were established, they were equal to the Chicago combination?

[fol. 137] A. Yes, I think that is right.

Q. But under your present rates, they are not the Chicago combination?

A. No, they are not.

Q. It is a lower combination over Kankakee?

A. And a lower combination via Chicago, if you want to put it on the corn reshipped in transit.

Q. But the combination is over Kankakee, is it not?

A. Yes.

Q. On Page 8 of your statement you refer to Exhibit 9 and say:

"It will be noted from this comparison that the rates as of July 10, 1956, favored the rail-barge route from approximately eight cents to eighteen cents per hundred-weight."

Mr. Murphy: Do you mean Page 8?

Mr. Chartrand: Page 8 of the statement, yes.

By Mr. Chartrand:

Q. When you blanketed this whole line to five cents, didn't you do something more at some of the stations than just meet this competition?

A. No, I would say that I did not. The five cents was a blanket rate and it was obvious that I wouldn't establish anything lower than that from the intermediate points.

Q. Why did you blanket the whole line?

A. I explained that. I had to get a key to the rate ad-[fol. 138] justment. The barge rate from Moronts to Chicago was five cents and my furthest western station was Moronts, so actually my rate met the barge rate at Moronts and as I went east, my rate still maintained a five-cent level, even though the barge rates as they progressed closer to Chicago declined under the five-cent level.

Q. But did you not also testify that on the east end of the line around Union Hill that there was far less effect of the Waterway competition?

A. I testified that east of Kankakee we were not affected by water competition. I don't recall any time making a statement saying that from Union Hill I had no competition on the Illinois River.

Q. Was the competition just as keen at Union Hill as it was at Moronts?

A. I think the exhibits again, if you will refer to both of them—let's take them again. Exhibit 4 shows that in 1956 you handled 227 cars, and that was mostly CCC for export, and in 1957 you handled 388 cars from Union Hill in a six-month period, in half the time.

So therefore again it is evident that we had the water competition we were meeting.

Q. Did anything come to your mind when you saw the tremendous increase of that size in less than half a year as compared to your previous, that conceivably you were too [fol. 139] low in establishing your rate?

A. No. If I would have established rates even one penny higher than the rate I established, I would have found myself in jeopardy, the same as the experiences in the past; the adjustment would not have been successful in meeting barge competition.

The only way you could have met this barge competition was by meeting it and meeting like with like, and that is exactly what we did, and that is why it was so successful.

I would have been disappointed if we wouldn't have picked up the business we did on it.

Q. Well, like with like, I suppose you refer to the barge rate?

A. The barge rate, yes, sir.

Q. And you established a rail rate that was comparable?

A. Yes, and that was additional revenue in and above the 54-cent reshipping rate.

Q. Wasn't there a trucking factor from Dwight over to the river that you failed to consider there?

A. Isn't there a trucking factor from Dwight to the elevator on the New York Central?

Q. It is on the New York Central.

A. I know, but that grain has to come from a farm. It makes no difference if it goes to the river elevator or the

[fol. 140] railroad elevator, you still have trucking, Mr. Chartrand.

Q. Mr. Tascik, you indicated you had a long rate legislative experience. Just how many rate matters have you participated in where the level of rates was made considering the distance or location of the producer's farm?

A. Not too many, I will tell you that right now.

Q. Any?

A. I don't know of any, no.

Q. You don't know of any, but here you are considering the location of this farm as an excuse for disregarding the trucking from Dwight to the river?

Mr. Murphy: I object to that question, your Honor. That isn't what the witness said at all.

By Mr. Chartrand:

Q. May I ask you this: You have disregarded the trucking from the Dwight elevator to the river?

A. Mr. Chartrand, I would like to have you refer to Exhibit 1, the territory south or the territory west of the New York Central. When we saw grain moving and crossing our railroad to the river, we started taking notice of the grain that actually should be going on our own railroad, which crossed our railroad and went down to the river.

[fol. 141] Now in the territory between the river and the New York Central, I think that that area is just as much New York Central area as it can be river area, and the proximity of the farm in one case might be closer to the river and in another might be closer to the railroad. The trucking is there just the same, you have got to truck either to the river elevator or to the railroad elevator. You have got to get the grain somewhere.

Q. Well, what you set about to do was to put the elevator on your railroad in a competitive position to compete for this corn?

A. Oh, that is exactly the entire objective of the five and a half cent rate, and to give us some added revenue.



Q. In your Exhibit 11 or where you make reference to Exhibit 11 on Page 12 of your testimony you say:

"It would naturally appear that we were making a 19½-cent reduction in this rate. This, however, is not true as the through rates on grain products are lower than the combination of local rates to Kankakee plus the reshipping rate beyond."

Now I am looking at Exhibit 11. Those destinations are in the CFA Territory?

A. That is right.

Q. But insofar as the 19½-cent rate reduction is concerned, that would be true to the Trunkline Territory, would [fol. 142] it not?

A. Yes, and that is why we didn't handle any business.

Mr. Legg: What was that last answer?

(Record read.)

By Mr. Chartrand:

Q. Then this 19½ cents you refer to, that would be a reduction from 25 cents under the present rates to five and a half?

A. Yes, sir.

Q. That is the extent of the reduction for the Trunkline Territory?

A. Yes, that is right.

Q. You made reference on Page 13 of your statement about car earnings of 1.58 cents per car mile. That is based on the weighted average distance, is it?

A. Yes, all of the shipments we handled during this six-month period.

Q. Which is about 38 miles?

A. 38.3 miles.

Q. How far is it from Moronts to Kankakee?

A. It is shown on one of the exhibits. Exhibit No. 13, the distance from—well, I don't have the distance. This was the actual—

Q. Would you take my word for it as being 83½ miles?

A. Yes, I will take that. That is about right.

Q. And the ear mile earnings considering the mileage [fol. 143] from Moronts would be considerably less, would it not?

A. Yes, but if you will notice Exhibit 13 there, none of the corn moved from Moronts.

My Exhibit 13 actually reproduces the movements of corn on the five and a half cent rate for the first six months of 1957.

Q. Well, if I changed it to Granville, 79.3 miles, what would your answer be?

A. Well, my answer would be yes, and, by the same token, if you took Van's Siding, 5.2 miles, it would make a difference.

Q. In weighting the average based on a six-month experience, do you think that is long enough experience for you to say what the average haul is for business on that railroad or on that line of railroad?

A. I think that this is probably an average that wouldn't vary two mills less one way or another over the period of the next few years. This is a good illustration of what we can anticipate in the future.

Q. Of course, that will depend a great deal upon how many leases are forthcoming at certain locations on that railroad, wouldn't it?

A. I don't think that leases for portable loaders have much—I think in this business you know that it is the number of times you can clean an elevator out that probably [fol. 144]—is as important as anything.

Q. You expressed an interest in avoiding wasteful transportation. Considering the mileage from Kankakee—from Chicago to Kankakee and to the East, do you consider the application of the proportional rates from Chicago or Kankakee via Louisville and Cincinnati to Buffalo as wasteful transportation?

A. I think it is very circuitous, but we all know that this corn moves or any grain under transit moves all around the world practically. In other words, we never have been successful in tying down our grain routing to specific routing. You know our routing to Trunkline Territory up to

this date today is still open, and those are some of the abuses we have today in this grain transit that we can move it almost anywhere through circuitous routes.

Q. Is not a great deal of that due to a commercial necessity? Do you not have customers and clients in Cincinnati that you would like to take care of?

A. I agree with you. After all, Mr. Chartrand, I hope you don't get the impression that when I talk about this rate from Chicago to Kankakee, that I said that I didn't want that business; but we were talking about it from an over-all picture, contrasting one to the other, what constitutes a more economic transportation characteristic compared to another, and I think that is what we have outlined.

Exam. Dahan: We will take a five-minute recess.

(Brief recess.)

Exam. Dahan: You may continue, Mr. Chartrand.

By Mr. Chartrand:

Q. Mr. Tascik, there appeared in the New York Central's reply to various protests and petitions of suspension—the date of the reply is July 29, 1957, and it carried therein some movement figures from origins on its line of railroad into Chicago, Kankakee, and Indianapolis, and so forth.

Mr. Bradford: What page?

Mr. Chartrand: It would be Page 6.

By Mr. Chartrand:

Q. And also on Page 11 thereof it shows the corn movement for the first six months of 1957 by stations and by destination.

Do they truly reflect—excuse me, you do not have them in evidence here, but do they truly reflect the corn movement as they show in that?

A. Yes, they do. In fact, it is a consolidation of those figures in the exhibit. I don't have it in front of me, so I can't tell you exactly.

They are in my Exhibit No. 4.

Q. Exhibit No. 4?

A. Yes.

[fol. 146] Q. The reason I make a point of it, if they are in the exhibit—they are in Exhibit 4 in part, those shown on Page 11 insofar as the destination of the cars in the first six months of 1957, and on Page 6 insofar as the destination of the cars in 1954, '55 and '56,—that is not shown in your exhibit?

A. That is right.

Mr. Chartrand: Counsel, could we have those incorporated as part of this record to reflect the movement of corn for the period shown?

Mr. Murphy: I have no objection to having them incorporated in the record. However, if there are some slight variances, I mean, a car or two, it was because of the haste with which these were prepared back at the time when time was of the essence in preparing a reply.

I mean, if you just want it for showing the general picture—

Mr. Chartrand: The movement of corn for the period shown.

Mr. Freeman: Apropos that point, isn't this a part of the record, the application?

Exam. Dahan: It is a part of the record, but it is not in evidence.

Mr. Chartrand: Will it be agreeable with you if we put it in evidence?

[fol. 147] Exam. Dahan: If the parties are agreeable, we will receive in evidence all of the application, protests and the replies, but that is up to the parties.

Mr. Chartrand: Just exactly the way they read.

Mr. Murphy: No, I don't agree to that for the reason that we don't agree to everything that was said in the protests.

By Mr. Chartrand:

Q. Do those figures as shown in the reply reflect the actual movement of corn for the period shown?



A. Yes.

Q. Referring to your Exhibit 7, Mr. Tascik, you show barge loading points including Lockport, Joliet, and then the last three stations, Hennepin, Henry and Lacon. In the original Fourth Section Application you did not show those stations as barge loading points on which the application was submitted.

Why are they included here?

A. Because I had no knowledge that the volume of the movement that was moving through those particular ports—as you recall, this injunction was a pretty hurried matter, and all we could do was just assemble the ports that looked to be directly opposite our station.

Q. But this application was filed on June 28, 1957, far in advance of the court proceedings.

[f6l.148] The Witness: What is the question?

(Question read.)

The Witness: Yes, that is right.

By Mr. Chartrand:

Q. In Exhibit 5 at the head of the column headed "Location of Competing Elevators," there is a reference marked "No. 2."

These are the river points to which shippers along the New York Central listed in the first column normally truck their corn because of better price quotations on account of lower shipping costs via barge as compared to applicable rail rates via Kankakee.

There you only considered river loading points from Moronts through Greenwich.

In your Exhibit 7 you include Lockport, Joliet, Hennepin, Henry and Lacon.

A. Because by the time this case was set down for hearing, I had additional time to develop the effects of Joliet, Lockport; Hennepin, Henry and Lacon, and they were just as much competitive with those ports—probably not in as great a volume as we are with the five other ports listed.

Q. From what developed there, was there trucking, let us say, from Union Hill or Reddick to Lockport rather than the shorter distance to Morris?

A. Well, I can't tell you where the farmer trucked his [fol. 149] grain, whether it was to Morris or Lockport, but the distance, you will probably notice from Exhibit 2, there isn't too much difference, and I don't know if the barge variables of three and a half, three and a quarter, three and three quarters and four and a quarter, influenced the movement via Lockport or Morris. Somebody that knows more about the trucking or those movements will have to qualify that.

Q. Mr. Tascik, in your Exhibit No. 14, you set out the switching costs or absorptions at Chicago. From there on your exhibit lists switch lines served such as the Chicago Junction, the Indiana Harbor Belt, and the Chicago River and Indiana Railroad as lines to whom the absorption was paid. Is that correct?

A. That is correct. The elevators are located on those railroads.

Q. Does the New York Central have a proprietary interest in those three switch lines?

A. Yes, the New York Central has.

Q. To what extent do you have an interest in the Indiana Harbor Belt?

A. We have a 60-percent ownership in the Indiana Harbor Belt.

Q. Sixty-percent ownership?

A. Sixty.

[fol. 150] Q. And in the Chicago Junction?

A. The Chicago Junction is leased to the CR&I and the CR&I is owned by the New York Central.

Q. Your subsidiary lines, how do they feel about a reduction in their revenues to the extent that you by-pass Chicago and eliminate this revenue to them?

A. Well, you say "by-pass Chicago." I think that when you want to approach this realistically, you can by-pass Chicago with the Kankakee Belt, and you can by-pass Chicago with the EJ&E, and you can by-pass Chicago with

any number of routes. It is just a matter of traffic availability for these lines.

Q. The fact that you pay about two cents a hundred out for this switching absorption is not a dead loss, though, to the New York Central, it being a proprietary line such as they are?

A. No, but I can tell you that the CJ and CR&I is a million and a half dollar deficit operation each year.

Q. Now referring to Exhibit 15, you show some circuitry, and a statement showing comparison of distance from Chicago via the New York Central through Kankakee to Albany, New York. Is that 4.24 percent circuitry?

A. Yes, sir.

Q. That is not very much, is it?

A. No, but still it is circuitous. It just shows that there [fol. 151] is additional mileage when the cars are handled from Chicago to Kankakee versus West End stations to Kankakee.

Q. You don't make a big point of circuitry on grain when it amounts to a little over four percent, do you?

A. It is merely here to show that there are transportation savings through the inauguration of the five and a half cent proportional rate and this mileage is just one of the factors in it.

Q. On the six-cent rate to Port Cargill, do you know if that is an intrastate rate?

A. Yes, sir. I do know that it is.

Q. You indicated that for the first six months in 1957 of the cars to Chicago, the predominant part of them was CCC grain, is that correct?

A. What period was that again?

Q. The first six months of 1957?

A. Yes, that is right.

Q. Is that grain that was routed under Government control and you would have gotten it in any event?

A. Yes, sir.

Q. Does this Government grain move via barge?

A. I don't know. I don't think so, but I couldn't say how it moves. It is grain, I mean, all of it. I know that—all I know is the way the CCC grain moves over the New York [fol. 152] Central.

**Q.** Would that be predominantly rail?

**A.** That is predominantly rail, yes.

**Q.** You established here about what percent came into Chicago as CCC grain, the difference being about 20 cars or so of free corn?

**A.** That is right.

**Q.** Now with regard to the movement into Kankakee from this Belt Line, how much of it was CCC corn?

**A.** I don't think any of it moved to Kankakee that was CCC corn. Most of it went to Chicago.

**Q.** The corn that does go to Kankakee to General Foods is the free corn—in other words, other than Government corn?

**A.** Yes. At least to the best of my knowledge—I don't know. You will have to develop that from General Foods. They will have a witness.

**Q.** I am just asking insofar as your knowledge is concerned.

How about CCC corn to Indianapolis?

**A.** I don't know what the proportion is of the grain moving on Government corn to the interior points from this territory. That is, out of the 2400 cars we handled, I don't know what the proportion is, but I can say this much, if the corn was not subject to milling the five and a half cent rate [rôl. 153] is not applicable.

**Q.** I understand that.

How about to Paris, Illinois? Is that CCC corn?

**A.** Not that I know of. It is strictly going to a transit operator at Paris.

**Q.** How about Decatur?

**A.** The rates do not apply from Kankakee to Decatur.

**Q.** I should say Danville, excuse me.

**A.** A transit operator.

**Q.** Free corn?

**A.** I would say free corn to the best of my knowledge. It is corn, that is all I know.

**Mr. Chartrand:** That is all. Thank you.

**Exam. Dahan:** Mr. Erickson?

**Mr. Erickson:** No questions.

**Exam. Dahan:** Any redirect?

**Mr. Murphy:** I have a few questions, your Honor.